

# **EXHIBIT E**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Fair Isaac Corporation,	)	
a Delaware Corporation,	)	File No. 16-cv-1054 (DTS)
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Federal Insurance Company,	)	Courtroom 14W
an Indiana corporation,	)	Minneapolis, Minnesota
and ACE American Insurance	)	Wednesday, March 1, 2023
Company, a Pennsylvania	)	9:00 a.m.
Corporation,	)	
	)	
Defendants.	)	
	)	

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BEFORE THE HONORABLE DAVID T. SCHULTZ  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE  
  
(JURY TRIAL PROCEEDINGS - VOLUME VIII)

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

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I N D E X

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**RANDOLPH BICKLEY WHITENER**

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**N. WILLIAM PAUL WAID**

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PLAINTIFF'S

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1 March 1, 2023

9:00 A.M.

2  
3 **(In open court without the Jury present.)**

4 THE COURT: Good morning. Be seated.

5 We'll take up the issue with respect to  
6 Mr. Waid's testimony over the lunch hour. It is clear to  
7 me he is not getting on the stand before then. All right?

8 MS. GODESKY: Yes.

9 THE COURT: Okay.

10 THE CLERK: All rise for the jury.

11 **(Jury enters.)**

12  
13  
14 **(In open court with the Jury present.)**

15 THE COURT: Go ahead and be seated.

16 Okay. Good morning. Thanks, everyone, for  
17 braving our slippery roads.

18 Mr. Hinderaker, are you ready to proceed?

19 MR. HINDERAKER: I am, Your Honor.

20 THE COURT: Go ahead and recall Mr. Whitener  
21 back.

22 MR. HINDERAKER: I would call Mr. Whitener.

23 THE COURT: Whitener. Come on up, Mr. Whitener.

24 THE WITNESS: Thank you.

25 THE COURT: Just remind you as you're walking up,

you're still under oath. I don't have to swear you again.

Do slow down a bit. Okay? The court reporter has to take down what you say, and you will hear from her if you're too fast.

THE WITNESS: Always delighted to hear from her. I'm pouring water. There is a blessing and a curse to be southern. We talk fast.

(Witness previously sworn.)

**(RANDOLPH BICKLEY WHITENER)**

DIRECT EXAMINATION (RESUMED)

BY MR. HINDERAKER:

Q. Good morning.

A. Good morning.

Q. In a few minutes, a couple minutes, I'm going to start off where we left off, but I want to do this beforehand.

Mr. Mayleben, would you bring up the RFI, please?

And in your binder, if it's going to be better for you, this is the J002 document.

A. I'm there.

Q. Okay. And on the screen is going to be -- there we go. I would like to bring your attention to page 6.

A. I'm there.

Q. And then I would like to bring your attention to that section which is titled "Current CSI IT Environment."

A. Yes.

1 Q. And go down to that, please. And then first if we can  
2 show the table, the graph. That's good.

3 And so you see that in the RFI, Chubb & Son is  
4 telling FICO that in the business tier, there already is,  
5 in their environment, Duck Creek?

6 A. Yes, I see.

7 Q. Okay. And then that's explained in the RFI, if we go  
8 to the writing underneath that. "From an architectural  
9 perspective the CSI environment can be broken out into four  
10 distinct silos: Underwriting, rating, claims and  
11 reporting."

12 In your analysis of all of the documents in this  
13 case that you have reviewed, was Blaze Advisor -- which  
14 silo was Blaze Advisor used in in the architecture of the  
15 defendant?

16 A. Blaze Advisor was used in the business tier. I am not  
17 completely certain what the underwriting worksheet is, so I  
18 won't speak to that. The only deployment of Blaze Advisor  
19 from the claims perspective was not in the claims services.  
20 It was in providing support to actuarial -- to the  
21 actuarial sciences group.

22 Q. Yes.

23 A. And then the underwriting services, it was deployed  
24 here because you see the words, "Renewal," and I take you  
25 back to my definition of this selling the insurance

1 process. It's a quote, it's a bind, it's a book, it's an  
2 issue. And I also point out that those words have been  
3 used by other defendants.

4 Q. Understood. In this exhibit under the next paragraph  
5 where it says "Additionally," it's describing that the  
6 interface -- about midway in that paragraph on  
7 "Additionally," the interface between CSI Express and the  
8 rating application is based loosely on a repository design  
9 style with the Infomix-based UWS database as a central  
10 repository. And it concludes, the rating application uses  
11 the Duck Creek rating engine to provide screen definition  
12 and black box rating calculation."

13 Do you see where I read?

14 A. I do.

15 Q. In reviewing all the documents, is it accurate that  
16 Blaze Advisor was used in the underwriting silo, and then  
17 it accessed a different silo called "Ratings," which  
18 included, at least in some applications, the use of Duck  
19 Creek?

20 A. Yes.

21 Q. Thank you. And so now let's go and return to where we  
22 were before. We were looking at -- we started off with --  
23 well, let's pick up where we left off, and let's go to  
24 slide 28, if we could.

25 And just as a quick review, this is a document of



1 the defendants', internal communication to themselves,  
2 different parts of it, the people, called Business Rules.  
3 And on this page of that document, it's a reporting inside  
4 the company, inside the division -- inside Chubb & Son, the  
5 division, uses within the P&C industry. Do you see?

6 A. Yes.

7 Q. Okay. And in terms of companies, it's reporting on the  
8 use of business rules within -- by different insurance  
9 companies?

10 A. Yes.

11 Q. And just to be clear, in each of the -- like in the  
12 results for AIG, it specifically references Blaze Advisor,  
13 right?

14 A. It does.

15 Q. And then in the solution description for Kemper Auto,  
16 it specifically addresses Blaze Advisor?

17 A. It does.

18 Q. And then for the Hartford Insurance Group, it  
19 specifically addresses Blaze Advisor in the solution  
20 descriptions column?

21 A. I agree.

22 Q. Okay. And in your view -- in your review of all of the  
23 materials, what was the significance of this to you?

24 A. The significance of this document to me was the fact  
25 that in internal communications within Chubb, they

1 highlighted the fact that other companies had done some  
2 quantification of benefits, and they stated those. So I  
3 viewed this as a marketing department -- I'm sorry, not a  
4 marketing department -- a marketing effort by presenter to  
5 say, hey, you know, look, other people are seeing some  
6 stuff from this. Maybe -- maybe we've got to take  
7 advantage of it.

8 Q. This is inside the IT group at Chubb & Son?

9 A. Yes, the communication.

10 Q. Right. So that, for example, they are reporting to  
11 themselves that AIG country-specific risk models, rating  
12 criteria, Blaze Advisor can be developed in shorter time  
13 periods, 5 to 14 days, versus several months. They  
14 reported predictive modeling for Kemper Auto and Home,  
15 eight-point reduction combined ratio after first year.

16 A. It does say that, yep.

17 Q. And that's insurance ease, insurance language. What  
18 is -- what is a combined ratio?

19 A. In the insurance industry, we tend to manage and  
20 measure on a ratio basis, so a combined ratio is a ratio of  
21 written premium and earned premium versus the percentage of  
22 various expense components of the profit and loss  
23 statement.

24 So if you have a combined ratio that is exactly  
25 100.0, you have broken even on your underwriting process.

1 If you have a combined ratio greater than 100.0, you're  
2 losing money on your underwriting process. If the combined  
3 ratio is less than 100.0, you are making money. Your  
4 underwriting process is profitable. That's the value of  
5 the combined ratio.

6 Q. So an eight-point reduction in the combined ratio is  
7 good; more money?

8 A. It is good from the perspective of something minus  
9 eight is a lower number. If -- and I do not know these  
10 numbers. I mean, I know -- pardon me. I know people at  
11 Kemper Auto and Home, not many, but I am familiar with  
12 them. But if their combined ratio -- and I'm going to go  
13 with a little bit of hyperbole here. If their combined  
14 ratio was 120 and they reduced it eight points, certainly  
15 they would have an objective to reduce the combined ratio  
16 because you're losing money on your underwriting process,  
17 but what you would have done is -- if you received an  
18 eight-point benefit, you would have gone from 120 to 112,  
19 still more work to do.

20 Conversely, if that combined ratio had been 105  
21 when they started the process of improving it and now  
22 you're down to 98, you've entered into the arena of an  
23 underwriting profit.

24 Q. And similarly, if you start off at an underwriting  
25 profit with a combined ratio of 90 and you reducing it by

1 eight points, now you have an underwriting profit of a  
2 combine ratio of 82?

3 A. I agree with that, and that is a correct statement.

4 Q. So the reduction is a beneficial positive direction?

5 A. Yes.

6 Q. Okay. And then the Hartford Insurance Group,  
7 straight-through processing was the objective. "The result  
8 drastically reduced error collection cycles, lowered the  
9 cost of writing policies."

10 Of course, that's what they reported internally.  
11 And did you evidence of that happening with the use of  
12 Blaze Advisor by Chubb & Son?

13 A. I would say yes to that. I saw use of Blaze Advisor to  
14 create a straight-through processing process for them, and  
15 I would expect those benefits. Computers do something the  
16 same way every time, and so humans don't; therefore, error  
17 processes go down.

18 I would also like to point out that since I have  
19 talked about my career at the Hartford, this happened after  
20 I was no longer working with the Hartford.

21 Q. Understood. Thank you.

22 Let's go to the next slide. This is a  
23 continuation of the same presentation but different  
24 insurance companies. Agreed?

25 A. Agreed.

1 Q. And again, on the slide itself, it's being specific to  
2 Blaze Advisor, Malaysia National Insurance Company  
3 identifies Blaze in the solution column, republic Indemnity  
4 identifies Blaze in the solution column, and Auto Club  
5 Group identifies Blaze Advisor in the solution column?

6 A. Yes.

7 Q. And Malaysia National Insurance reports faster and more  
8 consistent decisions, rapid updates as regulations and  
9 corporate policies change.

10 And did you see that same kind of experience with  
11 the defendants using Blaze Advisor?

12 A. I did.

13 Q. And Pacific Indemnity, improve data quality from all  
14 channels and making it easier for all agents to do business  
15 with the company.

16 Let me just focus on making it easy for the  
17 agents to do business with the company, did you see  
18 evidence of that with the defendants' use of Blaze Advisor?

19 A. Let me correct. It is actually Republic Indemnity, and  
20 yes, I did see evidence of that.

21 Q. My bad.

22 A. My reading glasses are better than yours.

23 Q. I guess. And then Auto Club Group, talking about  
24 increased straight-through profits and ease of doing  
25 business, moved from manual review of 100 percent of all

1 applications to a review of 1 percent, as well as a 35  
2 percent increase in number of applications processed.

3 In your review of the documents, did you see that  
4 the defendants were able to improve on the percentage of  
5 their renewal applications?

6 A. I saw that defendants were able to improve the  
7 percentage of their renewals that did not require human  
8 touch. Going back to the phrase "straight-through  
9 processing." That's not exactly how this says it, but  
10 that's what I saw.

11 Q. That's what you saw to the defendants.

12 A. Yes, and that's what this means.

13 Q. Okay. I'm going to move to another document, if this  
14 thing works. There we go. And this document is called --  
15 the title of the overall document is "Business Rules CoE  
16 Update, January 2009."

17 MS. GODESKY: Your Honor, may I approach?

18 THE COURT: You may.

19 MS. GODESKY: Thank you.

20  
21 **(Side-bar discussion.)**

22 MS. GODESKY: So these are all slides or  
23 documents that are not in evidence, and I think it's  
24 improper to keep publishing them page after page to the  
25 jury. That happened with the document we just walked

1 through, and now there is another one.

2 THE COURT: Are the slides within the documents?

3 MR. HINDERAKER: Yes.

4 THE COURT: Okay. So are these slides -- tell me  
5 your objection again.

6 MS. GODESKY: My objection is --

7 THE COURT: That that document is --

8 MS. GODESKY: -- this is taken from P603, slide  
9 28.

10 THE COURT: Right.

11 MS. GODESKY: And P603 is not in evidence. And  
12 that's going to happen with the next document, too, and  
13 several of the others. And while an expert can properly  
14 testify about documents that aren't in the record --

15 THE COURT: Right.

16 MS. GODESKY: -- I don't think it's appropriate  
17 to be publishing them. He can elicit testimony that he  
18 relied on certain documents, he reviewed documents that say  
19 certain things, but if we're publishing them, it's almost  
20 like they're in evidence, right? The foundation hasn't  
21 been laid through any FICO or Chubb witness, and so I think  
22 we're just back-dooring publication to the jury at this  
23 point. It's fair game for testimony, but not publication.

24 MR. HINDERAKER: I don't think we should be  
25 changing the rules of the game at this stage. These are

1 demonstratives. This is information that he relied upon in  
2 forming his opinions, and I think the jury needs to know  
3 what he relied upon.

4 THE COURT: Okay. So with that understanding,  
5 you can do it on the record, if you want. You can object.  
6 I will admit them for demonstrative purposes only, but the  
7 slides and the documents won't go back with the jury absent  
8 foundation for the documents. Okay? So you can publish  
9 them.

10 MR. HINDERAKER: Of course. I never thought that  
11 the demonstrative would go to the jury.

12 MS. GODESKY: Will the Court know -- you're  
13 accepting them for demonstrative purposes even though they  
14 have these stamps on them? You know, I just -- stamps  
15 suggest that they are in evidence.

16 THE COURT: I understand.

17 MS. GODESKY: Thank you.

18  
19 **(In open court with the Jury present.)**

20 THE COURT: Actually, I will just go ahead and  
21 instruct the jury on this.

22 Members of the Jury, the last document,  
23 Exhibit 603, and this next document, Exhibit 605, are not  
24 in evidence. They won't go back to the jury room with you.  
25 The slides that are being displayed from those exhibits are



1 simply used to illustrate the witness's testimony. They  
2 are demonstrative exhibits only, despite the number, the  
3 exhibit stamp on the documents.

4 Go ahead, Mr. Hinderaker.

5 MR. HINDERAKER: Thank you.

6 BY MR. HINDERAKER:

7 Q. Let us go now to this document that's on the screen  
8 now, Business Rules CoE Update, January 2009. This is a  
9 document you reviewed in forming your opinions?

10 A. Yes. Mr. Hinderaker, would you afford me the privilege  
11 of just finding the document in the binders?

12 Q. Sure, of course. 0605 is the number.

13 A. Yes. It's easier on my neck.

14 I'm there. Thank you.

15 Q. Okay. Good. So as the slide shows, this is a Business  
16 Rules CoE Update. And CoE stands for?

17 A. Center of Excellence.

18 Q. So this is an update of that Center of Excellence work.

19 I would like you to turn to page 14 of the  
20 document.

21 A. I am there.

22 Q. Okay. And this is called "Business Rules in the  
23 Insurance Value Chain as Classified Into Ten Categories."  
24 Tell us what that means?

25 A. If we will look at the top line underneath the heading,

1 you have large arrows going from left to right, starting  
2 with marketing, sales management, product development,  
3 underwriting. There is another word there. I can't tell  
4 what it is, rating -- I'm sorry, underwriting/writing,  
5 policy administration, customer management, claims. Those  
6 are all parts of activities or buckets that contain  
7 activities that insurance companies do.

8 Q. Okay.

9 A. Pardon me. Underneath that, you have a series of rows,  
10 and those series of rows are talking about tasks that have  
11 to be performed within those arrows at the top. So there  
12 is a relationship on the exhibit -- if the row of the task  
13 that has to be accomplished is to the left, it's lining up  
14 under the marketing and sales and the product development  
15 function; whereas, if it's to the right, it's lining up  
16 underneath the claim, the far right claims function or the  
17 far right customer management function.

18 So as you go down, you can look at these as tasks  
19 or tactics to be accomplished. The first one is product  
20 definition.

21 Q. Yes.

22 A. The second one is product configuration.

23 Q. Okay. Maybe we should go through each one  
24 individually. We can do it that way?

25 A. Certainly. Certainly.

1 Q. All right. So product definition, that means what?

2 A. So if you go back to the corporate underwriting  
3 function I talked about, one of their tasks is to define  
4 the company's appetite for risk, and then within that task,  
5 they're going to define the products to be sold and the  
6 jurisdictions where those products are going to be sold.  
7 Inside of that concept, there is product definition.

8 So I'm going to insure X. Let's arbitrarily  
9 decide on commercial fire. Okay? In commercial fire, what  
10 coverages are we going to offer?

11 Q. Okay. And once -- once corporate makes that decision  
12 in terms of product definition, then the next step in  
13 getting the product ready to go to market is what?

14 A. There are two steps that have to happen now.

15 Q. Okay.

16 A. The first step is you submit that to the statutory  
17 authority. So if it's Nebraska, it goes to the Department  
18 of Insurance in Nebraska. Simultaneously, that product  
19 definition is now going to go to the technology department  
20 because you want the technology to manage the "bind, book,  
21 issue" for that set of product definitions. And -- excuse  
22 me. My sinuses are acting up today.

23 That product configuration is going to be what  
24 the technologists build into the technology to execute that  
25 selling process, "bind, book, issue."

1 Q. So that's the second step on that value chain?

2 A. Yes.

3 Q. Excuse me. And then in your analysis of the case  
4 documents, was Blaze Advisor used with respect to product  
5 configuration?

6 A. Yes.

7 Q. Okay. Let's go to the next one, product inventory  
8 management. If you could describe what that is, please.

9 A. Again, this is a corporate underwriting function.

10 Q. Mm-hmm (Yes).

11 A. And I actually did this function -- well, I've done all  
12 three of these functions in my corporate underwriting  
13 experience. Product inventory is just really keeping track  
14 of what products and what aspects of products are deployed  
15 in each individual jurisdiction. So it's completely  
16 possible that you would have a product that you were going  
17 to introduce to all 51 jurisdictions. You can't get all 51  
18 done at the same time. So you go in -- you go in phases or  
19 waves or sprints. There are a lot of different terms used  
20 in the industry to describe this, but you pick X.

21 I'm going to arbitrarily pick five. You pick  
22 five states. I've got to get that product into those five  
23 states. Statutory filing out, submission to the technology  
24 folks for the development process, approval from the State,  
25 process completed, product introduced in those five states.

1 That leaves you with 46 jurisdiction, including the  
2 district that it's got to be done in.

3 This is what inventory -- product inventory  
4 management is.

5 Q. All right. And with the defendants' use of Blaze  
6 Advisor, was Premium -- the Premium Booking application an  
7 instance of product inventory management?

8 A. I would say that the Premium Booking fit in a different  
9 box. I think the example of the inventory management is --  
10 is actually the rules repository.

11 Q. Okay. Of Blaze Advisor?

12 A. Of Blaze Advisor, the RMA. And I'm sure that they had  
13 additional product tracking, but I can see it in Blaze.

14 Q. And then with respect to Premium Booking that I asked  
15 about, what -- what step -- or what category does that fall  
16 in, then?

17 A. That's going -- pardon me. Premium Booking is going to  
18 fall into the -- I'm going to say the underwriting of the  
19 product pricing and the validation boxes.

20 Q. So in each of those it fits. Okay.

21 Let's go to underwriting. We've had -- you know,  
22 you've described what it is. We've had some testimony  
23 about it. Applications that use Blaze Advisor with the  
24 defendants that were in the underwriting value chain, box  
25 four. Which ones were those?

RANDOLPH BICKLEY WHITENER - DIRECT

1 A. I'm sorry, Mr. Hinderaker. Repeat the question.

2 Q. Sure. I am just going to focus in on box number four,  
3 underwriting. And there were applications using Blaze  
4 Advisor by the defendants that were, in fact, used for  
5 underwriting?

6 A. Yes.

7 Q. And those applications were which ones?

8 A. CSI Express and Evolution Canada, and then there was  
9 use internationally. But in terms of North America, those  
10 two products, and inside of those products, we have to  
11 include DecisionPoint for specific products.

12 Q. And inside of those products, would you also include  
13 ARP-1 and ARP-2?

14 A. Yes.

15 Q. The fifth category here --

16 A. And, Mr. Hinderaker, can I go back to this underwriting  
17 box, just one more statement?

18 Q. Yeah.

19 A. This box, both corporate underwriting, but corporate  
20 underwriting is really rows one, two, and three. Row four  
21 for me, from my perspective, is the front-line  
22 underwriting. And as I stated earlier, Blaze Advisor  
23 participated in both those areas.

24 Q. Thank you for the clarification.

25 The next pricing rating, if you could describe

1 what that is for us, please.

2 A. The -- I'm going to take them separately. The pricing  
3 process is that process where the actuarial sciences and  
4 the product management group of the company work together  
5 to establish what is that adequate, precise, accurate  
6 premium on a type of risk exposure.

7 So I remind everyone that the goal is not to  
8 write policies that don't have losses. The goal is to  
9 write the policies that have an acceptable predictability  
10 of loss, versus the policies that have an unacceptable  
11 predictability of loss.

12 So in this -- sorry. So in this pricing process,  
13 the actuaries and the product develop -- I'm sorry, the  
14 product management people work together for a product, a  
15 state. So if it's a new product, they're defining the  
16 pricing initially. If it's an existing product, they have  
17 a periodic review, and depending upon the type of product,  
18 that review could be as frequently as every six months. It  
19 could be as infrequently as annually.

20 Q. Okay.

21 A. Now, change that over to rating. From that pricing  
22 process comes the rating methodology for a policy, which is  
23 then filed to each of the jurisdictions, and once approved  
24 for use, transitioned again into the configuration, the IT  
25 development part of the process where they build the

1 technology.

2 Q. Okay. In terms of the applications that the defendants  
3 used Blaze Advisor, was Profitability Indicator an example  
4 of this?

5 A. Yes, absolutely.

6 Q. Let's skip to -- let's skip to nine. You already  
7 mentioned that Blaze Advisor was not used in building or  
8 claims adjudication, front-end edits.

9 So let's go to nine. And nine is routing and  
10 orchestration, and if you would give us what that means in  
11 the insurance -- in the insurance industry.

12 A. A request for a new application is going to come into  
13 the company from an independent agent and broker. The  
14 first step is making sure that application makes it to the  
15 appropriate underwriting authority, or the authority if  
16 it's going to be human underwritten.

17 Q. Okay.

18 A. And so you have to have some kind of work distribution  
19 process.

20 An underwriter in a given day is usually going to  
21 touch four types of transactions, and this all relates back  
22 to the policy administration system. You have new business  
23 coming in. By the way, that's the number one priority,  
24 book your new business. Okay?

25 You have renewals that have to be dealt with.



1 That's the number two priority, book your renewals.

2 And then each of those policies can have two  
3 other types of transactions. You can have modification  
4 transactions. In the insurance industry, we call those  
5 endorsements. And endorsements can have no impact on  
6 premium; endorsements can change premium. And we have  
7 fancy words for that in the insurance industry, and I'm not  
8 going to use them here today.

9 Q. Okay.

10 A. The last transaction stream, I call it terminations,  
11 but the reality is applicants turn into policies and  
12 something happens and they request to cancel the policy, a  
13 cancelation. It's just a type of termination. Okay?

14 And sometimes the risk over the life of -- the  
15 policy over the life of the policy, the risk exposure is  
16 changed, and the company looks at it and says, oh, my  
17 goodness, we have gone from acceptable probability of loss  
18 to unacceptable probability of loss, and because it's an  
19 unacceptable probability of loss, we're going to non-renew  
20 the policy. So the workflow gets it to the underwriter,  
21 the underwriter part of the process -- I'm sorry. The  
22 workflow process is responsible for getting that policy to  
23 the right underwriting point so that the underwriter can  
24 then execute the transaction.

25 Q. Okay. And then with respect to --

1 A. Mr. Hinderaker, the court record is important. Can I  
2 ask you to read the last two sentences back? Okay. Go  
3 ahead, sir.

4 Q. Don't worry about it.

5 With respect to the applications that defendants  
6 had that use Blaze Advisor, one of them is CUW-IM?

7 A. Yes.

8 Q. IM being Inventory Management?

9 A. Yes, Commercial Workstation Inventory Management.

10 Q. Is that one of the -- is that an application that would  
11 fall in the value chain of workflow routing and  
12 orchestration?

13 A. Yes. Inventory management is, in fact, executing that  
14 process I talk about, making sure the request gets to the  
15 right party.

16 Q. Okay. And by "right party," are you saying the right  
17 underwriter?

18 A. Yes, if it is going to be human underwriting.

19 Q. Yes. Let's use human underwritten for a moment.

20 A. So then the answer to the question is yes, and it's  
21 going to get it to the right underwriting person.

22 Depending upon the complexity of the transaction, that  
23 might be a special underwriting assistant. It might be  
24 a -- it might be an underwriter. It's going to be somebody  
25 in the underwriting department with the authority and

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1 authorization to execute that transaction.

2 Q. Was it also used to direct the workflow and the  
3 application to the underwriter with the appropriate  
4 expertise to address -- the issue being to address the  
5 policy for underwriting?

6 A. In the specific case of defendant, yes.

7 Q. Okay.

8 A. There are -- there are insurance companies out there  
9 that don't really leverage that concept, but in this case,  
10 that is accurate.

11 Q. The defendants did?

12 A. The defendants did.

13 Q. Were they also able to, with this CUW-IM, I'll call it,  
14 extend the day?

15 A. Yes. Yes. Because if you have a submission of a  
16 request for policy that arrives at four o'clock in, just  
17 arbitrarily speaking, Boston, Eastern time, and the agent  
18 has communicated, I really need input on this by the close  
19 of business today, well, that's only one hour. But if you  
20 had that expertise on the West Coast, now you take 5:00  
21 p.m. and you extend it out to 6:00, 7:00- you extend it to  
22 8:00 p.m.

23 Q. Let's go now to number ten, predictive analytics of --  
24 did -- well, if you would describe for us how the  
25 defendants used Blaze Advisor applications with respect to

1 this element of value called predictive analytics.

2 A. Certainly. This takes place in two points. One of  
3 their predictive -- and I'm going to use the phrase  
4 "predictive modeling." That's probably a little more  
5 familiar phrase with people.

6 The first point where predictive modeling use  
7 Blaze Advisor was applied is a policy capability called  
8 profitability model.

9 Q. Profitability Indicator?

10 A. I'm sorry. Profitability Indicator. I apologize.

11 Profitability Indicator is a computer model using  
12 Blaze Advisor that created a prediction on profitability,  
13 as the name says, based on a given price point. And then  
14 the underwriter could look at that and say, oh, well, by  
15 golly, the price point needs to go up X, 5 percent. Or the  
16 Profitability Indicator could say, hey, by golly, you don't  
17 need all this money, you can go down 5 percent. Okay? And  
18 the 5 percent is just for examples. Okay?

19 Q. Sure.

20 A. So Profitability Indicator is a predictive modeling  
21 application. It used Blaze Advisor, and it was deployed  
22 into CSI Express.

23 Q. All right. And how about CIS Claims? Is that involved  
24 in the predictive analytics category for value?

25 A. It does. CIS Express was a predictive model used

1 primarily by the actuarial sciences folks --

2 Q. We're talking about CIS Claims.

3 A. I'm sorry. I'm sorry. CIS Claims is a predictive  
4 model used in the actuarial sciences function. And what  
5 it's doing is it's taking a hindsight view of policies, and  
6 it's recalculating the proposed premium for it.

7 Q. All right.

8 A. Okay? And then that proposed premium, it could be spot  
9 on, it could be exactly right, it can be too little, oh, my  
10 goodness and we've got to adjust our pricing process, or it  
11 could be too much and, again, we would have to adjust our  
12 pricing process.

13 Q. Okay. Let's go to another slide that you reviewed,  
14 another document. This is Business Rules Situation  
15 Overview, and we're going forward in time to May 2014.  
16 This is a document that you reviewed as part of your  
17 analysis in forming your opinions?

18 A. Yes.

19 Q. And -- oops. And this document has the Donald Light  
20 quote that we saw before.

21 A. Yes, it does.

22 Q. So Chubb & Son continues to reference that as it's  
23 internally talking about Blaze Advisor.

24 A. Agreed.

25 Q. And then we've seen what drives the business value.

1 We've seen this slide before: Precision, consistency,  
2 agility, speed, cost?

3 A. I agree.

4 Q. And still relevant as Chubb & Son is speaking about the  
5 use of Blaze Advisor a few years -- a few years forward.

6 A. Yes.

7 Q. Okay. Let's go to this document and it's called  
8 "Enterprise IT Strategies and Appendices."

9 A. Yes.

10 Q. Okay. And this is another document that you reviewed?

11 A. I did, in fact, review this document, yes.

12 Q. All right. This one is dated November 28, 2009. And  
13 I'm directing -- by the slide, I'm directing your attention  
14 to -- these pages happen to be at 27 and 28, but it's  
15 discussing what is called the small business platform.

16 And tell us how this -- tell us the relevance of  
17 this document to your analysis of how Blaze Advisor was  
18 used by the defendants and the value of that use.

19 A. The date of this document becomes important in that  
20 analysis. So we have the licensing in 2006, and now three  
21 years later, we have the presentation by defendant that  
22 we're going to pursue this small business platform, okay?  
23 And the sentence that you've highlighted points out the  
24 components of this small business platform. Okay?

25 So the components are an automated renewal

1 capability. So far we have heard that referred to as ARP,  
2 Automated Renewal Processing, driven by a rules engine  
3 architecture, and that's Blaze Advisor.

4 Q. Okay.

5 A. A Profitability Indicator, which I just spoke to a  
6 minute ago. And a market-facing web quote -- I'm sorry --  
7 market-facing web quoting capability. That will be a  
8 product named DecisionPoint.

9 Q. Okay.

10 A. So I read this document, and I see that Chubb continues  
11 to focus on the small and mid-market specialty and  
12 commercial lines, available market space, if you afford me  
13 that term.

14 Q. Sure.

15 A. And they're going to focus their efforts in what  
16 they're going to call the small business platform, and  
17 they're going -- the foundation of that small business  
18 platform is going to be these capabilities.

19 Q. And as it says in the first sentence, "The small  
20 business platform is the next level business operating  
21 model, aided by technology, to defend and grow CSI's highly  
22 profitable small to middle market book of business."

23 Stopping there, in your analysis, that aligns  
24 back to the key strategic initiative of the RFI?

25 A. It does. I think there is an additional word that is

1 important in there, Mr. Hinderaker. I think the word  
2 "defend" is very important, because three years later,  
3 after 2006, after we want to grow this book, now not only  
4 do they want to grow it, but they want to defend it --  
5 defend what they have accomplished.

6 Q. There is a sentence that reads, "The new operating  
7 model integrates sufficient underwriting, speed of  
8 response, and greater ease of doing business for our  
9 agents."

10 A. Yes.

11 Q. Can you speak to how Blaze Advisor contributed to those  
12 values?

13 A. Certainly. If you look at more efficient underwriting,  
14 there are two aspects to this. The first one is, how fast  
15 can we get it done? The second one is, how good are we at  
16 achieving that acceptable, precise price point? Okay?  
17 That's efficient underwriting. And ARP -- Blaze Advisor  
18 was deployed to ARP, Automated Renewal Processing 1 and 2,  
19 to improve speed. Okay?

20 The underwriting process, it was used in that to  
21 both achieve that adequate, precise premium, as well as to  
22 be more efficient so that if it didn't have to be touched  
23 by an underwriter, you didn't have to incur that time. And  
24 ease of doing business is a combination of many of those  
25 things, but it's meeting the relationship needs, be faster,



1 be more precise, don't surprise me, aspects of the  
2 relationship between the independent agent and brokers and  
3 the underwriters.

4 Q. Okay. And maybe you've touched on this in your last --  
5 what you just said, but they talk about greater ease of  
6 doing business for our agents. Anything further to say on  
7 that, or have you addressed it?

8 A. As it relates to the case documents I reviewed, I've  
9 addressed it.

10 Let me say this: When I entered into the  
11 industry and was a front-line underwriter, we were taught,  
12 encouraged, to be and measured on relationship with agents  
13 in terms of, don't have an agent call in the general  
14 manager and disparaging your name as the underwriter. Do  
15 not do that.

16 And just as a funny aside, our first -- at the  
17 Hartford Insurance Group, our first foray into improving  
18 speed in an area where my underwriting tools on my desk  
19 were a ruler, a pen, carbonized forms and a Monroe JD-30  
20 calculator, and the rack. I mentioned the rack.

21 Q. Today we use technology?

22 A. Today we use technology, but our attempt to improve  
23 speed was when we stopped including requests for quotes in  
24 the regular mail, and they were now delivered specially to  
25 me in a special folder at a special time. New business

1       submissions requests for quotes arrived at 10:00 a.m., and  
2       my job was to stop whatever I was doing and underwrite what  
3       was in that envelope, and then -- I'm sorry -- folder, and  
4       then put the folder in a special place because later they  
5       were going to come pick it up.

6       Q.   Now, was that --

7       A.   Our effort to increase speed and to be easier to do  
8       business with basically required us to change the mail  
9       process and the use of underwriting time process.

10      Q.   It might be fair to say speed of response and ease of  
11      doing business has always been important in the insurance  
12      industry, and technology has made it faster and better and  
13      easier?

14      A.   As long as I been here, that is an accurate statement.

15      Q.   All right. Let's go on. I want to talk about a few of  
16      the other concepts here. It's talking about focused  
17      retention. What does that mean?

18      A.   An insurance company wants to hold on to their  
19      renewals. The reason for that is because the -- I'll use  
20      the phrase "organic growth." New companies forming and  
21      pursuing insurance, that's just not that great. It's not  
22      that great in personal lines. It's not that great in  
23      commercial lines, property and casualty. It's not that  
24      great in specialty lines. There is just not that much new  
25      new.

1           So one of the processes that every -- one of the  
2       sales processes, sales and marketing processes, or growth  
3       tactics if you will, is let's take policies from somebody  
4       else. Chubb -- just as a wild example -- Chubb, as a wild  
5       example, is looking and saying, I wonder if I can get some  
6       AIG policies over here, and they do that through the  
7       relationship with the independent agents and brokers.

8           So focused retention is, I've got -- and I'm  
9       going to use some numbers. These are arbitrarily selected  
10      numbers. I have got 100 renewals. If I can hold on to 100  
11      renewals, that's great. They won't succeed at that, but  
12      they always try -- they always measure and they always try  
13      to hold on to their renewals. One of the annual reports  
14      makes reference to this. The U. S. renewal retention for  
15      commercial lines, I believe was 87 percent.

16      Q. Okay. Let's go to the next one. I mean, that's good.  
17      Okay?

18           Let's go to the next one. Targeted nonrenewal.  
19      What is that? What is the meaning of that?

20      A. It means that we, we the company, recognize the fact  
21      that risk exposures are going to change, and if a -- if a  
22      policy's risk exposure moves out of the acceptable level of  
23      probability of loss into the unacceptable, as that policy  
24      comes up to renew, we are going to refuse to renew it.

25      Nonrenewal is the industry fancy phrase for, I have a

1       statutorily required process I have to execute.

2       Q.   Okay.   And then repatriation in this context.

3       A.   I'm going to change your pronunciation of that word.

4       It's repatriation.

5       Q.   Okay.

6       A.   Repatriation means, you know, by golly -- and, again,  
7       I'll give you an example.   AIG managed to get this policy  
8       away from us a year ago, two years ago, but I still know it  
9       exists, and I'm going to -- as that policy renewal date  
10      comes up, I'm going to make an attempt to bring it again --  
11      bring it back to us, away from AIG back to Chubb.

12      Q.   And then right pricing, cross-selling, upselling?

13      A.   Right pricing is just use of predictive modeling to get  
14      that accurate, precise premium for the policy.

15                 Cross-selling just means, hey, we've got a policy  
16      with this -- with this business.   We sure would like to  
17      sell another policy to them.

18                 Upsell means, wow, we've got this policy in this  
19      product.   Let's see if we can move them to a more robust  
20      product.   This is going from a Toyota to a Lexus, and I  
21      don't even know if that's the correct auto company  
22      relationship.

23      Q.   I understand.

24                 And then new business risk attraction and new  
25      business risk avoidance.   And could you just address those

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1 two, briefly?

2 A. New business attraction is the concept of having the  
3 agents and brokers view Chubb as a preferred carrier and  
4 the first carrier they're going to submit to. So when I  
5 talk about the front-line underwriter or the front -- or  
6 that field office of underwriters, trying to build that  
7 relationship and that loyalty with the -- with the  
8 independent agents and brokers.

9 That's why they do this. We want to believe that  
10 when you see this application, this potential customer, and  
11 you know it meets our risk appetite and our guidelines, we  
12 want you to send it to us first.

13 Q. Okay.

14 A. That's new business attraction.

15 Risk avoidance is just simply the, oh, my  
16 goodness, this application has an unacceptable probability  
17 of loss. We don't want to write it. We will decline it.

18 Q. And then as the document concludes or as it's  
19 highlighted, the key components of this platform are  
20 automated renewal capability driven by a rules engine  
21 architecture, profit -- and Profitability Indicator for  
22 real-time scoring of risks.

23 And in your review of the documents of the  
24 defendants, was it at this point the automated renewal  
25 capability, ARP-1 and ARP-2, as well as Profitability

1 Indicator for the real-time scoring of risks that were  
2 used -- to use a computer word, used to leverage Blaze  
3 Advisor and their various applications?

4 A. Yes. All these were points of emphasis for the  
5 deployment of Blaze Advisor.

6 Q. Through the applications?

7 A. Through the applications, correct.

8 Q. So what's the -- maybe you've covered some of this. So  
9 what's the takeaway that you have from this part of your  
10 analysis of the documentation?

11 A. I had several takeaways from this document. One of the  
12 first was, well, this is my positive sign that the business  
13 community, the underwriting -- that corporate underwriting  
14 function, if you will, and the IT people are working hard  
15 together to execute those corporate strategies and tactics.

16 Q. Okay.

17 A. I mentioned earlier the word "defend," defend and grow  
18 that small to mid-size commercial, that was a point of  
19 emphasis for me.

20 Q. Good.

21 A. There are other things on the slide. Would you like  
22 for me to speak to them?

23 Q. I'm just wondering if we haven't already touched them  
24 when we were talking about it from the document itself.

25 A. My answer would be, I have covered that thoroughly.

Q. Okay. That's why I moved on.

And then this is another document, another one that you reviewed called "SBP Profitability Indicator for New Business, Business Requirements." This is a document you reviewed in forming your opinions?

A. It is.

Q. And going to -- this is August 2008. I'm going to take you to page 4, and we have it on the screen as well. And we have this header, "Project Background."

A. Yes.

Q. Then it is titled "The SBP Profitability Indicator," so now we're more specific discussion of the small business platform for Profitability Indicator?

A. Yes.

Q. All right. And then in many ways this is a repeat of the earlier documents, so we don't need to spend a lot of time on it, but "In creating the next-level operating model aided by technology, to defend and grow Chubb's specialty highly profitable small to mid-market book of business. The key to survival in this market is efficient underwriting, speed of response and low-cost structure."

A. The answer is yes. Let me, for the Court, point out that SBP is simply small business platform, the beginning document that we just looked at.

Q. All right. And then we can go to the next slide where

1 Chubb is talking to itself and saying -- is talking to  
2 itself and saying, "The Profitability Indicator integration  
3 with renewals project, these objectives were identified in  
4 the business case."

5 And we have spoken about targeted nonrenewal,  
6 focused retention, repatriation, upsell, cross-sell, right  
7 pricing. From your review of the case documents, was the  
8 defendant able to identify -- was the defendant able to  
9 achieve each of those business objectives?

10 A. I would say most.

11 Q. Okay.

12 A. I'm not willing to comment on repatriation. I can show  
13 you in the documents where it was an aspirational project  
14 on the -- on the list for the future.

15 I also will say the same thing for upsell and  
16 cross-sell. Upsell and cross-sell is spoken to through the  
17 use of Blaze Advisor, in their deployment of Blaze Advisor  
18 for underwriting guidance. I have seen instances where  
19 the -- the underwriting rules, response to the underwriting  
20 was, move to a better product.

21 I've seen rules, responses in the underwriting  
22 guidance that said, hey, this is a specialty product;  
23 cross-sell them to commercial insurance. I saw those. But  
24 repatriation, aspirational.

25 Q. Okay. With that -- with the exception of repatriation



1 being aspirational, the other objectives were achieved?

2 A. Yes.

3 Q. Using Blaze Advisor?

4 A. Yes.

5 Q. Okay. We have seen this document before. It's in  
6 evidence. It's the 2018 Annual Report of Chubb Limited?

7 A. Yes.

8 Q. In your review of the documents, did Chubb Limited take  
9 this statement to heart, "Technology is a competitive  
10 weapon"?

11 A. Yes.

12 Q. Okay.

13 A. Counselor, if I may add one point? When I entered the  
14 industry, there were no personal computers. There was no  
15 Duck Creek. As time went on and technology capabilities  
16 increased, insurance companies moved to begin to adopt and  
17 deploy those technologies.

18 Some companies were rapid adopters. Some  
19 companies were slow adopters. But by the early 2000s, I  
20 sat in executive groups where the phrase "adequate  
21 technology" is table stakes to be in the game came about.  
22 We just got to a point where if you weren't  
23 technology-capable, the independent agents and brokers  
24 weren't going to send you business.

25 Q. Got it. Got it. Let me -- I need to look for a

1 document. I'm going to -- if you would go to -- well, let  
2 me --

3 This is the first page of a document,  
4 Mr. Whitener, that you prepared, correct?

5 A. Correct.

6 Q. And here you are summarizing, from your review of the  
7 documents of the defendant, the business reasons for using  
8 Blaze Advisor in connection with selling insurance.

9 Agreed?

10 A. Agreed.

11 Q. And then in this document, which we won't -- in this  
12 document -- well, I say "document" because I have it  
13 printed, but then there are additional documents that  
14 follow, slides if you will.

15 For example, in discussing speed and in  
16 discussing precision, and we will go through each one of  
17 those, but with respect to your analysis of each of those  
18 attributes, at the bottom of the slide, you identify the  
19 documents that are being summarized in that -- in that  
20 analysis. Is that true?

21 A. That is correct.

22 Q. So you've identified all the source material that you  
23 are looking to for a discussion of the meaning and the  
24 application of these reasons for using Blaze Advisor from  
25 the defendants.

1 A. Yes.

2 MR. HINDERAKER: Your Honor, this has been marked  
3 as Exhibit 1137A. It is this slide and the following  
4 slides that speak to each of these elements, with the  
5 identification of all of the documents that are being  
6 referenced, and this notebook is all of the documents that  
7 are being referenced.

8 And I offer as a Rule 1006 summary this  
9 Exhibit 1137A. 1137A.

10 MS. GODESKY: Objection.

11 THE COURT: Counsel, approach.

12  
13 **(Side-bar discussion.)**

14 THE COURT: Well, my question at least is, have  
15 all of those underlying documents already been admitted?

16 MR. HINDERAKER: No.

17 THE COURT: Then I think 1137A has to be a  
18 demonstrative.

19 MR. HINDERAKER: A demonstrative?

20 THE COURT: Mm-hmm.

21 MR. HINDERAKER: Fair enough.

22  
23 **(In open court with the Jury present.)**

24 THE COURT: Mr. Whitener, make sure your  
25 microphone is back on.

BY MR. HINDERAKER:

Q. So let's, if we may, go through this.

A. My time is yours. My wife disagrees, by the way.

Q. Yeah, right.

All right. Let's keep working here. We're going to go through each one of these. We've spoken about each one to some extent, and let us go through each one together now.

So turning to speed, if you would discuss how Blaze Advisor was used by the defendants with regard to the attribute -- positive attribute, in selling insurance that we are calling speed.

A. Each of these points in the slide, again, come from a defendant document that I reviewed, so let me start at 50,000 feet. Speed is important. The faster you respond to an agent, the faster you bring product to market, the faster you modify existing products for approval by the regulatory, statutory powers, the better you are. Okay?

Q. Okay.

A. So, was -- was speed a goal for defendant? Yes.

Q. And was that goal achieved?

A. Was Blaze Advisor deployed to make things -- to make things faster? Yes. That goal was achieved.

Q. Okay.

A. Okay.

Q. Execute decisions faster even in real-time.

A. Yes. I mean, if I -- if I go to the discussion of my early days in underwriting, and I take you back to some of my opening comments, the personal insurance group of products is more simple. The commercial suite of -- main street commercial suite of process increases in complexity. The specialty insurance market base is more complex. Each of those groups would have an amount of time it would take to underwrite a policy, to underwrite a renewal.

So if in that market segment you have deployed Blaze Advisor through Automated Renewal Processing, Phase 1 and Phase 2, and you have successfully done it, each of those renewal policies that is coming through is going to be done much faster, and the renewal offer is going to make it to the independent agent and the policyholder faster.

If you look at new business -- and I'll use specifically DecisionPoint in this case. If you have a market-facing portal that will deliver back a real-time quote and inside of that you embed other functions in terms of the underwriting process, the rules, and you embed the Profitability Indicator and you respond in real or near real-time back to that request, that increases your probability of converting the quote into a policy.

So yes, executing decisions faster was accomplished.

1 Q. Do you agree with their statements in their documents  
2 that speed is a key to survival in this market for  
3 efficient underwriting and response and low-cost structure?

4 A. Yes. Multiple documents of the defendant emphasized  
5 the need for speed and the deployment of Blaze Advisor to  
6 accomplish that.

7 Q. Let's go to precision. We spoke about this in the  
8 context of predictive modeling. And was the application  
9 called Profitability Indicator one of the applications that  
10 did predictive modeling?

11 A. Yes.

12 Q. And what else about precision did you see in the  
13 defendants' documents that was significant relative to the  
14 use of Blaze Advisor?

15 A. I'll initially in this discussion link back to  
16 DecisionPoint, where you get a quote in real or near  
17 real-time. With that precise premium, accurate premium,  
18 you increase your precision of your pricing, which  
19 theoretically now means that when you come back and you  
20 look at that policy in the future through CIS Claims, the  
21 actuarial analytical, the actuarial analytical comes back  
22 and says, we did great. That's perfect. We got the price  
23 right.

24 Q. Were the defendants able to use Blaze Advisor to  
25 elevate decisionmaking to the level of the organization's

1 top expert?

2 A. The capability was there -- I would actually need to  
3 know who wrote -- so let me delineate. I've seen this  
4 through testimony.

5 There are two aspects to the rules. There is the  
6 what should the rule be? I'm going to use the word  
7 "writing the rule," or the phrase, excuse me. And then  
8 there is the transfer of that rule into technology. Okay?  
9 And I'm going to use the phrase "authoring the rule."

10 So when it comes to writing the rules, until I  
11 know who in the corporate underwriting function wrote those  
12 rules, I can't -- and then the transfer of those rules and  
13 the document transfers them, I can't say that. I can't say  
14 Blaze Advisor can make this happen if the deployment  
15 chooses to.

16 Q. If they want to. Exactly so.

17 And the other bullet points that are on this  
18 screen for precision, you saw those bullet points in all of  
19 their documentation as well?

20 A. All but one. The reduced claim leakage. Again, I have  
21 found no indication that Blaze Advisor was deployed into  
22 the claim system. Much like cross-sell and upsell, this  
23 was aspirational.

24 Q. Got it.

25 A. They hadn't gotten there yet.

1 Q. All right. And with that exception, they had gotten to  
2 the rest of them?

3 A. Yes.

4 Q. Then let's go to consistency. Why is consistency  
5 important to selling insurance?

6 A. Consistency has two aspects. The first aspect is, the  
7 agents and brokers do not like to be surprised. They --  
8 they want to know what's coming. So if you consistently  
9 execute a request for quote on a specific type of  
10 policy/state combination, that accrues to your benefit; you  
11 are being consistent.

12 The other place that consistency applies is in  
13 the execution of the underwriting rules because a computer  
14 is going to take a set of facts, ten -- ten fact points.  
15 Okay? And it's going to analyze it and come to the same  
16 conclusion every time as long as all ten of those fact  
17 checks are unchanged.

18 We humans, we're not particularly good at that.  
19 There is a reason I've never bowled a 300 game, and it's  
20 because I can't do the same thing over and over again well  
21 all those times.

22 Q. Okay. Agility. From your review of all of the  
23 documentation, there is a number of bullet points of what  
24 follows from being agile. Could you discuss some of those?

25 A. Certainly. Being agile is the twin of being fast.



1 Being fast is just, get her done. Agile is, change  
2 quickly. Okay?

3 And so there -- there were times where an  
4 opportunity raised its head and pre- deployment of Blaze  
5 Advisor -- pardon me -- that deployment didn't -- didn't  
6 meet the needs of the business -- of achieving the business  
7 opportunity, and after Blaze Advisor, it did.

8 Q. What was that example?

9 A. That is Chubb Custom Market. It's a 25 million dollar  
10 book of business that Chubb was looking to acquire from  
11 another insurance company.

12 Q. And using Blaze Advisor, they achieved that?

13 A. Well, what they did -- to achieve that, they had to  
14 modify their booking process, and they used Blaze Advisor  
15 to accelerate the modifications that were needed to the  
16 booking process so that they could get the business.

17 Q. So they were -- they increased their speed and got the  
18 opportunity.

19 A. Yeah.

20 Q. Okay.

21 A. There are some -- there are some other points in here  
22 that I will --

23 Q. Well, I'm going to go back.

24 A. Thank you.

25 Q. Yeah.

1 A. The legacy modelization observation I think is  
2 important. I have been involved in several processing  
3 transitions for policy administration, for billing, for  
4 claims, not nearly as much in claims. It is -- it is  
5 difficult for exceedingly large companies.

6 And just to arbitrarily pick on one, I'm insured  
7 by State Farm. They're still using many legacy systems  
8 because the transition to more modern technology is  
9 difficult. So what they do is, they use modern technology  
10 to supplement the core legacy system sitting in the  
11 background. Okay?

12 And that was -- that was one of the things that  
13 they were doing with Premium Booking modernization.

14 Q. One of the things the defendants were doing with  
15 Premium Booking modernization?

16 A. That is correct.

17 Q. Okay. Moving on to scale, from your review of the  
18 documents, was this achieved with Blaze Advisor?

19 A. Yes. They processed -- they processed business with  
20 the same amount of humans.

21 Q. They processed more business --

22 A. More business. I'm sorry. I left out "more."

23 The underwriting talent of an insurance company  
24 is expensive to build, and it is a critical human resource  
25 strategy to retain. You know, you don't -- you don't want

1 to lose any percentage of your underwriting staff unless  
2 they're just not good at it. Okay? And insurance  
3 companies have lots of process and procedure to monitor  
4 those things.

5 So if you can take -- and, again, I'm going to  
6 use arbitrary numbers, if you can take a staff of 100 and  
7 they're doing 200 policies, and now all of a sudden through  
8 the deployment of technology you have a staff of 100, and  
9 now they can do 400 policies, they want to do that.  
10 That -- that's scale, and that is a point that Blaze  
11 Advisor was used at because now all of a sudden that  
12 eight-hour day, zero -- well, not zero. Anytime -- well,  
13 yeah. Anytime a policy was coming up for renewal -- and I  
14 remember in my underwriting days, I had to underwrite  
15 renewals at my desk. If a policy was coming up for renewal  
16 and the automated renewal processing project allowed that  
17 to go straight through and a human didn't have to touch it,  
18 that is underwriting time that can be allocated to  
19 something else.

20 Q. And I want to move on to that. You said the  
21 underwriter is a critical human resource in the insurance  
22 company. Is there value in freeing the underwriter's  
23 time -- letting Blaze Advisor do some of the work, is there  
24 value in freeing the underwriter's time to do other things?

25 A. Yes.

1 Q. And why is that valuable?

2 A. Well, there are two -- there are two things that the  
3 underwriter's time would be allocated to, and the most  
4 important is that relationship with the agent and broker.  
5 It frees them to spend more time with the agents and  
6 brokers, working on that loyalty aspect of the relationship  
7 that I talked about.

8 The other thing it does, is it's completely  
9 possible now that you have underwriting capacity to pursue  
10 or evaluate new opportunities, new projects, because if  
11 you're -- if you're touching renewals with humans, those  
12 humans' times is being lapsed, it's being used.

13 Now they have that time, and you can say things  
14 like, wow, maybe we should have a combined auto and  
15 homeowners policy, and I'll bet you Bick Whitener would  
16 bill that for us.

17 Q. Got it. All right. Yes. And now let's go to  
18 compliance. I take it you don't sell insurance policies --  
19 you have the stay-out-of-jail rule. You don't sell  
20 insurance policies without being in compliance with state  
21 regulations and the company's requirements?

22 A. Correct.

23 Q. All right.

24 A. The CEO's with whom I worked, if I had to walk into  
25 their office and tell them that we had egregiously breached

1 the rules of a state, I would not be well-received.

2 Q. And did -- understood. And did -- did the defendants  
3 use Blaze Advisor in any of the applications to -- to be in  
4 compliance with the requirements of the State?

5 A. They used Blaze Advisor to both be in compliance with  
6 the State and company requirements. And they used Blaze  
7 Advisor to control ranges where underwriting flexibility on  
8 a certain item, it had a ceiling, it had a floor, and you  
9 just had to make sure you stayed within that ceiling/floor.

10 Q. Okay. And so we've heard testimony about Texas  
11 Accident Prevention Program, TAPS, an application the  
12 defendants used with Blaze Advisor. Is that an example of  
13 staying in compliance with state requirements?

14 A. Yes.

15 Q. And then you mentioned applications that were used --  
16 you mentioned how through Blaze Advisor containing  
17 applications, they stayed in compliance with their own  
18 company requirements?

19 A. Yes. Individual rate modification application would be  
20 a good example of this. On certain types of policies in  
21 the commercial insurance arena, you are allowed to file  
22 your rates in such a way that there is a -- there is a --  
23 you can't go over this, and you can't go below that, and  
24 that provides the underwriter some flexibility in terms of  
25 that pricing process as they're working on the quote.

1 Q. And so that application that we now call IRMA was using  
2 Blaze Advisor to inform the underwriters of the range  
3 consistent with state regulation in which they could work  
4 on the premium for the policy?

5 A. I would say that a little differently.

6 Q. How would you say it?

7 A. But -- but the job of IRMA, Individual Rate  
8 Modification Application, with Blaze Advisor was to just  
9 simply not let the underwriter choose a point that was  
10 outside of the range.

11 Q. Okay.

12 A. The nice thing about -- the nice thing about IRMA and  
13 other rules is, you've got to obey them.

14 Q. Got it. All right. I understand. I think we're --  
15 different ways of saying that.

16 And then let's go to ease of doing business.  
17 We've spoken about this before. This is the relationship  
18 between the underwriter and the independent agent/broker.

19 A. Yes.

20 Q. And using Blaze Advisor, from your review, were the  
21 defendants able to improve the ease of doing business  
22 between themselves and the independent agents and brokers?

23 A. Yes. The independent agents and brokers got more  
24 consistent answers. The independent agents and brokers got  
25 faster responses. The independent agents and brokers got

1 consistency. This -- this was a tactical deployment aimed  
2 at benefitting ease of doing business in addition to some  
3 of the other value points we discussed.

4 Q. Okay. Now, I want to turn the subject matter to the  
5 different kinds of systems that insurance companies use in  
6 terms of selling insurance. And we'll review the different  
7 kinds of systems, give that an overview, and then we can  
8 identify the various applications and put them in their  
9 appropriate systems. Okay?

10 A. Fine.

11 THE COURT: Mr. Hinderaker, it sounds to me like  
12 this might be a convenient breaking point for the morning  
13 break.

14 MR. HINDERAKER: I fully agree with you.

15 THE COURT: Okay. Thank you.

16 Members of the Jury, we will take our morning  
17 recess. Be back in the courtroom at 15 minutes to 11:00.  
18 Thank you.

19 THE CLERK: All rise for the jury.

20 **(Jury exits.)**

21  
22  
23 **(In open court without the Jury present.)**

24 THE COURT: Go ahead and be seated.

25 Mr. Whitener, you can go ahead and step down.

1 Just a housekeeping from yesterday, we have  
2 spoken with the jurors, and they are unwilling and/or  
3 unable to go to 5:30, which we couldn't have done last  
4 night because the building, by the way, was shutting off  
5 all the water, which means many horrible consequences  
6 result.

7 However, they're willing to shorten their lunch  
8 break to 30 minutes. And, Ms. Godesky, since you raised  
9 the issue, do you want to have a 30-minute lunch break  
10 today so that we can move things more quickly?

11 MS. GODESKY: That's fine with defendants.

12 THE COURT: Mr. Hinderaker, can you live with  
13 that?

14 MR. HINDERAKER: I'm going to try.

15 THE COURT: Okay. So plan accordingly,  
16 obviously, get your food here. We'll also take up the  
17 issue then --

18 MS. KLIEBENSTEIN: Can I jump in, Your Honor?

19 THE COURT: You may.

20 MS. KLIEBENSTEIN: Why -- let's just go through  
21 this. So Ms. Pawloski is coming tomorrow, and Mr. Waid is  
22 going today. So the concern about tomorrow is what again?

23 THE COURT: It's both Mr. Harkin and  
24 Ms. Pawloski, and I think we're just trying to ensure that  
25 Ms. Pawloski can get on and off the stand tomorrow.



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1 MS. GODESKY: Yes, and we're communicating with  
2 her to figure out what our plan is. But I just think  
3 generally we need to move things along because, you know,  
4 we're still in the middle of direct of Mr. Whitener, and so  
5 I don't even have confidence that we're going to be able to  
6 start our case midday tomorrow at this point.

7 THE COURT: We'll see, but --

8 MS. KLIEBENSTEIN: Here's -- so late last night  
9 at 11:30 we got new exhibits that deal with Mr. Harkin.  
10 Here is my concern: I do not want Mr. Harkin to start  
11 today. I don't think nobody is really concerned about  
12 that.

13 MS. GODESKY: No.

14 MS. KLIEBENSTEIN: It's tomorrow? Okay. Then I  
15 am going to sit down.

16 THE COURT: We will take a half an hour at lunch.  
17 Twenty minutes after we break, we will take up the issue of  
18 Mr. Waid's testimony that was raised this morning. Okay?  
19 So you guys get effectively 20 minutes, as do I.

20 MS. GODESKY: Your Honor, before we go off the  
21 record, I do want to at this point renew our objection to  
22 Mr. Whitener's qualifications under Rule 702, and we move  
23 to strike his testimony and instruct the jury to disregard  
24 it.

25 FICO conceded that he was not an expert in

1 decision management software, let alone Blaze. Defendants  
2 asked for a voir dire of his credentials. We didn't have  
3 that opportunity. He was essentially presented based on  
4 Mr. Hinderaker's representation that he would be talking  
5 about insurance principles, and we have now listened to  
6 four hours of freewheeling testimony about the value of  
7 Blaze to Chubb. And we are defending a 21 billion dollar  
8 revenue disgorgement claim, and it is enormously  
9 prejudicial to have this presented to the jury when he is  
10 not meeting the standards of Rule 702.

11 THE COURT: The motion is denied. On the  
12 question of whether you were permitted to voir dire the  
13 witness, what I said yesterday was that we would take this  
14 up as appropriate during the testimony, so I didn't deny  
15 you that opportunity. I denied you that opportunity at the  
16 outset of his testimony.

17 Regardless of that, I understand the defendants'  
18 objection. Having read and re-read Judge Wright's order, I  
19 believe the objection falls within her prior ruling that  
20 Mr. Whitener's methodology and his opinions are admissible  
21 and that the issues you're raising, including his  
22 qualifications, because that was really raised in the guise  
23 of his methodology, in my view. But regardless of that,  
24 the concerns you are raising in my judgment go to the  
25 weight and credibility of the witness's testimony.

1 So -- but your issue is preserved.

2 MS. GODESKY: Thank you.

3 THE COURT: Thank you. We will be back.

4 **(Recess taken.)**

5

6

7 **(In open court without the Jury present.)**

8 THE COURT: Be seated. Mr. Whitener, before the  
9 jury comes in, I'm going to give you a couple of  
10 instructions.

11 THE WITNESS: Yes.

12 THE COURT: Slow down, number one.

13 Number two, I know you wouldn't know this, but  
14 you can't ask questions, okay, of your lawyer or of court  
15 staff. Allow that to happen properly, if it's going to  
16 happen. Okay?

17 THE WITNESS: Yes, sir.

18 THE COURT: All right.

19 We will -- we're going to chew up that lunch  
20 hour, 30 minutes, on the early side, so we're going to go a  
21 little bit later now, and then we will plan to break at  
22 12:30.

23 THE CLERK: All rise for the jury.

24 **(Jury enters.)**

25

1  
2                   **(In open court with the Jury present.)**

3                   THE COURT:   Be seated.

4                   Mr. Hinderaker, you may proceed.

5                   MR. HINDERAKER:   Thank you.

6                   BY MR. HINDERAKER:

7                   Q.   As we said just at the break, there are three different  
8                   kinds of functions related to selling insurance:   Policy  
9                   administration systems, compliance systems, and utility  
10                  systems.   Agreed?

11                  A.   Agree.

12                  Q.   I think we've spoken about the policy administration  
13                  systems, and we can do that more in the context of the  
14                  specific applications.

15                  We've spoken about the compliance systems, and we  
16                  can do that a bit more in the context of the specific  
17                  applications.

18                  And then let's talk about the utility systems as  
19                  well in the context of the specific applications.

20                  A.   Agreed.

21                  Q.   So the first set is the policy administration system  
22                  applications.   And in overview, is this correct that these  
23                  are the systems that execute the "bind, book and issue"  
24                  process that you have described for us?

25                  A.   Yes.

1 Q. And is it these systems that would be the ones to  
2 modify existing policies, either to cancel or renew as  
3 well?

4 A. Yes.

5 Q. And is it also the truth -- true that the defendants  
6 with Blaze Advisor policy administration system  
7 applications automated the business decisions in the steps  
8 of selling insurance?

9 A. Were deployed, yes.

10 Q. Yes. And these defendants chose to use Blaze Advisor  
11 as one of the technologies in their policy administration  
12 systems -- systems?

13 A. Yes.

14 Q. And is it possible to sell insurance without a policy  
15 administration system?

16 A. Not and be competitive.

17 Q. All right. So let's turn to the applications. And do  
18 you place each of these ten applications in the category  
19 of -- of a policy administration system?

20 A. I do.

21 Q. All right. So we have CSI Express, Automated Renewal  
22 Processing 1 and 2, Profitability Indicator, DecisionPoint,  
23 Evolution Canada, Evolution Australia, EZER for the  
24 European United Kingdom zone, Adapt for Europe, Adapt for  
25 Australia and Cornerstone. Those are the ones?

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1 A. Yes.

2 Q. All right. Now let's look at what the Blaze Advisor  
3 function was in these applications.

4 With respect to CSI Express, is that accurate  
5 from your analysis?

6 A. It is.

7 Q. So predictive modeling, policy scoring and underwriting  
8 guidance?

9 A. Yes.

10 Q. And then for Automated Renewal Processing 1 and 2, is  
11 that accurate from your assessment of the evidence?

12 A. It is.

13 Q. So ARP-1 is the renewal categorization, whether it can  
14 or cannot be automated -- whether it can or cannot be  
15 straight-through process, and ARP-2 is the policy renewal  
16 automation?

17 A. Correct.

18 Q. And did ARP-2 include endorsement generation?

19 A. It did.

20 Q. Profitability Indicator, we've spoken about that, I  
21 think. The predictive modeling, the scoring?

22 A. Yes.

23 Q. That was a Blaze Advisor application, correct?

24 A. Correct.

25 Q. And then DecisionPoint, rules tables and pricing

1 calculations, I don't think we spoke about that yet. Could  
2 you describe what that was using Blaze Advisor?

3 A. Yes. I'm sorry. DecisionPoint is the market-facing  
4 capability for the -- for an approach into four products.  
5 Okay? It -- it brought information in. It priced it. It  
6 went through the process of taking it through the  
7 underwriting guidelines for those specific products, and it  
8 was capable of giving back a real-time quote based on  
9 defendant documents.

10 Q. And so the eligibility determination is, in the steps  
11 of selling insurance that we looked at, that is the  
12 yes-or-no box?

13 A. Yes. It's the yes-or-no box. It is, does this meet  
14 the underwriting criteria, yes or no.

15 Q. And endorsement generation we spoke about.

16 And data normalization, would you tell us what  
17 that was?

18 A. Actually, this was referred to earlier. Data  
19 normalization is just -- it's going to outside databases  
20 and saying, hey, the data that you have given me here  
21 doesn't match. As an example, I about every 45 days get a  
22 notification from the U. S. Postal Service that my address  
23 is wrong, and it's because of a period.

24 Q. Okay. Then Evolution Canada and Australia, the Blaze  
25 Advisor function was underwriting guidance?

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1 A. Yes.

2 Q. And the Adapt application in European and Australia --  
3 in Europe and Australia was also underwriting guidance?

4 A. Yes.

5 Q. And then Cornerstone was -- would you describe -- we  
6 haven't really touched on Cornerstone, bond and transaction  
7 validation, workflow routing. How was Blaze Advisor used  
8 in Cornerstone?

9 A. Cornerstone is the policy administration system for  
10 surety bond type of products. They're a little bit of a  
11 different animal, but Blaze Advisor was used for these  
12 steps for the workflow routing and for the validation.

13 Q. Saying they're a different animal, is it accurate to  
14 say that underwriting a surety bond transaction is a bit  
15 more complex than commercial?

16 A. Yes.

17 Q. And is that because of the risk that is associated with  
18 underwriting -- with surety bonds?

19 A. Yes.

20 MS. GODESKY: Objection. Leading.

21 THE COURT: Sustained.

22 BY MR. HINDERAKER:

23 Q. Tell us why, please.

24 A. Surety bonds are a little bit of a different animal  
25 because the exposure risk is higher.



1 Q. Uh-huh.

2 A. But more importantly, the exposure risk is higher  
3 because in all of the insurance I have been talking about  
4 at this point, there are two parties. There is the --  
5 there is the applicant who is going to have the policy, and  
6 there is the writing company providing the policy. In  
7 surety -- in surety bond there are now three players.  
8 There's the -- because surety bond is functionally a  
9 performance guarantee. So when you see large construction  
10 projects, every one of those contractors, the people that  
11 gave them the contract, to get the contract, they demand a  
12 surety bond.

13 The contractor has to get the surety bond, so you  
14 have the -- the person receiving the service, you have the  
15 person providing the service, and you have the insurance  
16 company providing the financial protection in terms of the  
17 guarantee. A little more complicated, a little more  
18 involved.

19 Q. Okay. So that's the overview of those policy  
20 administration applications or systems and the applications  
21 within them. I want to go now -- have you review for us  
22 your analysis of the defendants' documents with respect  
23 to -- with respect to them.

24 Perhaps the most efficient way to do that is if I  
25 could ask you to speak to the --

1 THE COURT: Counsel, approach, please.

2  
3 **(In open court with the Jury present.)**

4 THE COURT: Please put that back up. Thank you.

5  
6 **(Side-bar discussion.)**

7 THE COURT: Sorry, but the second to the last  
8 bullet point on that slide refers to the cost of basically  
9 replacing and getting the application new. I want to make  
10 it clear, you're talking about the CSI Express application.

11 MR. HINDERAKER: I am.

12 THE COURT: Okay. I just wanted to make sure, as  
13 opposed to --

14 MR. HINDERAKER: Not the whole schmiel.  
15 Application by application. There will be a couple other  
16 instances of that, but it's application by application.

17 THE COURT: And the applications we're  
18 referencing are the applications of Chubb.

19 MR. HINDERAKER: Only, yes.

20 THE COURT: Okay. I just wanted to make sure.

21  
22 **(In open court with the Jury present.)**

23 BY MR. HINDERAKER:

24 Q. In my view, this is important information, and I'm also  
25 trying to think about the most efficient way to convey the

1 information. So I'm suggesting, Mr. Whitener, if -- using  
2 this slide, if you could speak to the bullet points that  
3 you have put on the slide regarding the CSI Express  
4 application, and tell us in your view the significance at  
5 the defendants.

6 A. Certainly. CSI Express is the policy administration  
7 system for the specialty products of defendant. You will  
8 notice in the -- in the second bullet point that we note  
9 from defendant documentation that they have 113 of those  
10 specialty products. So CSI Express is doing the policy  
11 processing, it's doing the new business, the quotes, the  
12 renewals, the terminations. It's executing -- or managing  
13 the execution of the "bind, book, issue" process for these  
14 products.

15 CSI Express is the named application, computer  
16 system in the 2006 RFI, requesting the information about  
17 solutions. There is a lot of other information on here.  
18 Let me highlight just one or two things, and I'm going to  
19 look at the slide to do this, because I don't remember the  
20 details.

21 Q. Please look.

22 A. Probably the most important point here is the fact that  
23 it supports Automated Renewal Processing, so that's through  
24 two projects, ARP-1 and ARP-2. It has a simulation tool in  
25 it, a what-if, so that the corporate underwriting process

1 at Chubb and that product development function I -- product  
2 management function I spoke to can take a book of business  
3 or a product and it can take all of that -- all of those  
4 policies, and it can change rules and parameters and get a  
5 result back that says, hey, if you do this, this is what we  
6 expect to happen, which is very powerful.

7 And the last point I will make -- the last two  
8 points I'll make is, this is one of the places where the  
9 predictive modeling capability turned into Profitability  
10 Indicator is applied, and it used Blaze 7.1.

11 Q. Okay. Then let's do a similar approach with Automated  
12 Renewal Processing. We'll combine both ARP-1 and ARP-2.  
13 From the documents and your review, if you would explain  
14 for us the significance of the bullet points you put on  
15 this slide.

16 A. Certainly. So with the goal for straight-through  
17 processing and the goal to improve speed and the goal to be  
18 easier -- I'm sorry. I apologize.

19 The first goal being straight-through processing;  
20 the second goal being improved speed; the third goal being,  
21 it would be easier to do business with, using Blaze Advisor  
22 7.1, defendant built two renewal processing projects. They  
23 deployed ARP-1, when ARP-1 was just simply a  
24 categorization. Here is a policy's risk characteristics.  
25 It fits into high touch, the underwriter has to do this.

1 Low touch, maybe somebody else can do it, an underwriting  
2 assistant. And no touch.

3 But with ARP-1 even though it categorized it no  
4 touch, the system still wouldn't issue the renewal. I  
5 mean, a -- a minor, minor amount of human interaction was  
6 required. When they flushed out and implemented and  
7 deployed ARP-2 now in that no-touch category, that minor  
8 amount of button-pushing was no longer required.

9 The goal that was stated in the documents was to  
10 eventually get to 90 percent of the renewals going through  
11 straight-through processing within three years. It's a --  
12 it's a learning process. It's a step-by-step process. So  
13 you would go in, and if you had stuff that categorized at  
14 high touch, you would look at it, and say, anything we can  
15 do with the rules.

16 If it were low touch, you would now be looking  
17 at, okay, what can we do that might turn more of those into  
18 low touch. So it is an iterative process, if you'll allow  
19 me that phrase.

20 Q. And then no touch would be characterized as  
21 straight-through processing?

22 A. Yes. No touch and straight-through processing mean the  
23 same thing.

24 Q. And in your review of the defendants' documents, did  
25 you see where they were able to change the renewal rules

1 within a couple days as compared to months using Blaze  
2 Advisor?

3 A. Yes. Defendant documents have several statements that  
4 say that the use of Blaze Advisor in this rule modification  
5 process modified the time frame to change rules from three  
6 to four months to -- and I'm going to use less than a week.  
7 It was three or four days.

8 Q. With Blaze Advisor, three or four days?

9 A. Correct.

10 Q. And then Blaze Advisor 7.1, was that the version being  
11 used for ARP-1 and ARP-2?

12 A. That also was correct.

13 Q. Profitability Indicator, I know we've spoken some about  
14 that, so we don't have to repeat what we have heard, but to  
15 save time, from your review of the documentation and the  
16 things that you put on the slide, could you speak to the  
17 ones we haven't addressed?

18 A. Profitability Indicator uses -- or used Blaze 7.1.  
19 Profitability Indicator's job was to enable the  
20 underwriting function to have a more accurate and precise  
21 price in the quoting or in the renewal process. It  
22 accomplished that well.

23 There are several things in here that I mentioned  
24 that I had seen as desires: Cross-sell, upsell,  
25 repatriation. I see indication that none of those were

1 actually fully implemented but that they were in the  
2 underwriting guidance.

3 Q. They were in the underwriting guidance?

4 A. Yeah, they're in the underwriting guidance. Cross-sell  
5 this, upsell that. Repatriation, no indication that  
6 anything was done.

7 Q. So with cross-sell and upsell, if not fully  
8 implemented, they had begun to do that?

9 A. They had begun to help the underwriters with that, yes.

10 Q. DecisionPoint, same process, if you will. Trying not  
11 to repeat what we said already, but speak to the  
12 significance of what you saw Blaze Advisor doing for the  
13 defendants with DecisionPoint.

14 A. My review of the defendants' documents indicated that  
15 DecisionPoint was -- was a market-facing capability,  
16 meaning that you could get to it through the Internet. I  
17 believe the Internet address was at Chubb. It had -- the  
18 interface initially has a number of commercial and  
19 specialty types of products with it, and this -- this was  
20 used with four specific products. It allowed the  
21 underwriting process and profitability -- with  
22 Profitability Indicator to be able to provide a quote and  
23 through a technology process that would allow the agent and  
24 the customer to accept it and the binding take place right  
25 there.

1 Q. Of course, you noticed on the bullet point that it was  
2 available 24/7, given the nature of that.

3 And you said the four -- four kinds of products.

4 D&O means what, please?

5 A. Directors and officers.

6 Q. EPL means what?

7 A. Employment practices liability.

8 Q. Crime means?

9 A. Crime.

10 Q. And fiduciary means?

11 A. Fiduciary is financial protection for financial  
12 institutions against employee malpractice -- employee  
13 misbehavior.

14 Q. And what is the significance in closing a sale of an  
15 insurance policy if you're able to issue the quote at the  
16 point of sale, right at the point of sale?

17 A. You accomplish two things. The first one is that much  
18 faster than it having to come into the office and being  
19 touched by an underwriting process. And as I've mentioned  
20 before, the faster you respond to quotes, the higher the  
21 probability that you convert the quote to a policy. And in  
22 all of my years of experience, quote conversion percentage  
23 was an important -- it was a key performance metric, if you  
24 will.

25 The second thing is, with this happening so fast,



1 you are being easy to do business with, and the combination  
2 of speed and ease of doing business helps with the  
3 relationship with the agent and broker.

4 Q. And then the DecisionPoint application, you have here,  
5 files all supporting documentation to commercial  
6 underwriter's workstation.

7 DecisionPoint, why don't you describe the  
8 relationship, then -- the interrelationship between  
9 DecisionPoint and the information into underwriter's  
10 workstation?

11 A. Sure. So DecisionPoint is going to gather a lot of  
12 information, and what's it's going to do in the execution  
13 of the "bind, book, issue" process, is it's going to make a  
14 decision. Its decision that it makes, its price that it  
15 applies to the quote, all of that is going through a  
16 communications interface to go back to the -- to the  
17 commercial underwriter workstation, which is a -- it's an  
18 application that is there for the underwriters to be able  
19 to see information about the policies and any -- any  
20 pertinent interactions between the underwriter or the  
21 special underwriting assistant and the independent agent  
22 and broker.

23 Q. On your slide here, you have the statement that the  
24 estimate of cost to purchase new or develop internally is  
25 between 5 and 10 million dollars. That's speaking

specifically to the DecisionPoint application?

A. It speaks specifically to the DecisionPoint application, and the document I take that from isn't provided there. I can't remember the name of the -- the organization that provided that estimate. Perhaps Duff & Phelps.

Q. And we've had testimony about that earlier, about Duff, D-U-F-F, and Phelps evaluation?

A. Yes.

Q. And I should have asked, going back a couple slides, it said, for CSI Express, the same Duff & Phelps evaluation, it set the cost to purchase or develop CSI Express at between 25 and 40 million?

A. It does say that.

Q. Let's go to Evolution Canada, another policy administration system. Using the same approach, tell us the significance that you gleaned, discerned, from the documents of the defendants regarding Evolution Canada.

A. Evolution Canada is the policy administration system executing the "bind, book, issue" process for the country of Canada. Evolution is a little bit unique in that it is processing both personal lines, commercial lines and specialty lines; whereas, CSI Express is processing no personal lines. Okay?

The primary thing I noted in Evolution is that

1 the Automated Renewal Processing is -- is up there in that  
2 system, deployed into that system as well. So it's going  
3 through the process of, okay, here comes a renewal. I  
4 believe Mr. Pandey's definition of the renewal window was  
5 90 days. So 90 days in advance, look at the risk  
6 characteristics. Is it high touch? Is it medium touch?  
7 Is it low touch?

8 Q. Okay. And did you see from the documents of the  
9 defendants that in Canada they were able to achieve an 82  
10 percent of the renewals at no touch?

11 A. I did -- I did see that stated in the documentation.  
12 It was a Duff & Phelps document.

13 Q. And in Canada for Evolution, it uses both .net and  
14 dot -- I'm sorry -- .net and Java architecture. That was  
15 in the documentation as well?

16 A. Yes.

17 Q. And you have on a slide version 7.1 is the Blaze  
18 Advisor being used?

19 A. I do.

20 Q. Okay. Let's go to Evolution Australia. What did you  
21 see in the documentations of the -- documentation of the  
22 defendants regarding Evolution Australia?

23 A. The documents indicate that the intent was to take the  
24 Evolution policy administration system from Canada and  
25 transport it to Australia to be the policy administration

1 of use in the country of Australia. And I saw that that  
2 did not happen because as they started the deployment  
3 process, Blaze Advisor in that was replaced by the IBM  
4 product ODM.

5 Q. Okay. As originally received in Australia, the Blaze  
6 Advisor software was in the Evolution application?

7 A. The documents do indicate that.

8 Q. Now let's go to EZER, European Zone Executive Risk,  
9 another policy administration system --

10 A. Yes.

11 Q. -- correct?

12 And what did you find to be significant and  
13 meaningful regarding the use of Blaze Advisor for this  
14 application?

15 A. So, again, EZER takes on a little bit different flavor.  
16 This application is very similar to the functions performed  
17 by CSI Express with the combination of Commercial  
18 Underwriter Workstation. Blaze Advisor is used in it for  
19 transactional processing, but primarily in terms of giving  
20 underwriting guidance. It does have the automated renewal  
21 capability to categorize into the -- into the three  
22 categories.

23 Q. Okay.

24 A. And it does use Blaze 7.1.

25 Q. And then the -- the underwriting element of it is -- is

1 the underwriting element of it supporting the quotation,  
2 binding, renewal, endorsement, cancellation, reinstatement,  
3 document generation, reporting, that's all -- I'm sorry.  
4 When we speak of a policy administration system, we're  
5 speaking of a system that supports quotation, binding,  
6 renewal, endorsement, cancellation, reinstatement, document  
7 generation and reporting, right?

8 A. Correct.

9 Q. We go to Adapt Europe and Australia, did you see that  
10 Adapt was used in both of those geographical areas?

11 A. I did.

12 Q. And so we can -- we can -- but we can speak of the  
13 application together. The application did the same thing  
14 in each of the geographical areas?

15 A. Correct.

16 Q. So from your review of the documents of the defendants,  
17 what was significant about the use of Blaze Advisor in  
18 Adapt?

19 A. Let me start by saying, this is the first demonstration  
20 outside of the property and casualty universe. This is  
21 actually -- Adapt is the policy administration for a life  
22 health product called Accident Benefit Life. In the  
23 document you will see it referred to as ABL. But in Adapt,  
24 Adapt is managing the "bind, book, issue" process and the  
25 transactional streams that you would expect a policy

1 administration system to manage.

2 And Adapt is using version 7.1.

3 Q. Okay.

4 A. I'm sorry. I am wrong. I think Adapt was a different  
5 version number. No, I'm incorrect again. 7.1.

6 Q. All right. And did Adapt support using Blaze Advisor  
7 straight-through, no-touch processing, real-time, bind and  
8 issue, back-end administration, automation, document  
9 generation and electronic filing?

10 A. It did.

11 Q. Going to Cornerstone, another policy administration  
12 system. You mentioned that Cornerstone supported the Chubb  
13 surety line of business?

14 A. Correct.

15 Q. To be distinguished from the specialty line of  
16 business?

17 A. Correct.

18 Q. And as a policy administration system, did Cornerstone  
19 support the "bind, book, issue" process for those kinds of  
20 products?

21 A. It did.

22 Q. Is there more -- you're telling us that it was using  
23 version 7.1 of Blaze Advisor. Is there any more  
24 significance in your analysis regarding Cornerstone that we  
25 haven't spoken to?

1 A. The only other point I would make is, it was used to  
2 optimize and manage workflow.

3 Q. And could you explain that, please?

4 A. Routing of work to the appropriate party, very similar  
5 to the Inventory Management aspect of CUW.

6 Q. Okay. Understood. Thank you.

7 Let's move to what are called the compliance  
8 applications.

9 A. Certainly.

10 Q. And in your review, Blaze Advisor was used in three  
11 compliance applications.

12 A. That is correct.

13 Q. And the slide here identifies them as Premium Booking,  
14 we've spoken some about; Texas Accident Prevention Systems,  
15 TAPS; and Individual Rate Modification, IRMA?

16 A. Correct.

17 Q. All of those have been identified -- we've mentioned  
18 them each, so let's just go through each one individually.

19 Premium Booking modernization, the Blaze Advisor  
20 function was -- was what?

21 A. Validation of the rules for the Premium Activity  
22 Reporting System. You will see this Premium Activity  
23 Reporting System referred to as PARS, P-A-R-S.

24 Q. When we discuss that application in its individual way,  
25 we will look at that in some more detail.

Texas Accident Prevention Systems?

A. This is a compliance use simply to meet a statutory requirement by the great state of Texas for specific types of workers' compensation policies.

Q. Okay. And individual rate modification, pricing rules, would you describe that if you haven't -- well, you did some.

A. I did some. My description now will not be radically different. Individual rate modification used with certain commercial and specialty types of products is a mechanism to give pricing flexibility to the underwriter in the pricing of the policy.

And individual rate modification, if you will allow me to use the term "guardrails," the top of the range is a guardrail, the bottom of the range is a guardrail, and the job of IRMA is to make sure that nothing -- nothing crashes through the guardrails.

Q. Stay within the guardrails?

A. Stay within the guardrails.

Q. So now we will -- we will turn to Premium Booking modernization. I want to go forward on a slide here because you spoke, I think, of this element of the PARS modernization and resulting in the Premium Booking application.

From the defendants' documents, could you



1 describe what that image is showing?

2 A. This image is not technology-specific. This is a  
3 business view of what has to happen. So when an insurance  
4 company issues -- well, binds a policy, okay? So the --  
5 figuratively speaking, the bind button has been pushed, the  
6 quote has been accepted, the renewal offer has been  
7 accepted, there are a number of things that need to happen.  
8 Because we are a highly regulated industry, 51  
9 jurisdictions, information has to go to multiple places.  
10 One of those places is going to be statistical reporting.

11 So we -- we watched a testimony deposition, and I  
12 have already forgotten this gentleman's name, but in his  
13 title he used statutory reporting. Statutory reporting is  
14 just simply the insurance company sending to the  
15 appropriate regulatory bodies information about policies.  
16 Okay?

17 In statutory reporting, a policy is just not one  
18 set of data. So if I go back to that commercial fire  
19 policy that I talked about, a commercial fire policy has  
20 fire coverage. I'm sure that's a big surprise, right? But  
21 that fire -- that fire coverage, it has a coverage code,  
22 and part of the total policy premium is attributed to that  
23 code. And then that information, through a booking  
24 process, in this case PARS, improved upon by Blaze Advisor  
25 through a project called Premium Booking Modernization is

1 now feeding that information.

2 Well, I can tell you there is a code there for  
3 lightning, and a premium would be associated to lightning.  
4 There is a code there for wind and hail, and it will be  
5 associated to hail. I won't bore you with all 17 or 18 of  
6 those coverages, but that's what happens.

7 Q. Okay.

8 A. And it is important because it is statutorily required,  
9 okay?

10 The nice thing about -- the nice thing about this  
11 chart is it shows you how many places a premium has to go  
12 after that booking has been executed. And if you look at  
13 this chart, it's got to go to one, so daily premium and  
14 loss control. It's got to go to billing. It's got to go  
15 to actuarial bureau reporting. Those are -- actuarial  
16 bureau reporting means data aggregators for the industry --  
17 I'm sorry. It's a statutory requirement. There are  
18 companies that aggregate data for the insurance industry,  
19 and companies contribute to them. The NAIC is a good  
20 example of that.

21 So then -- we've got three places the data has  
22 got to go now. We are going to go to a fourth -- it's  
23 going to send information to the policy -- I'm sorry, to  
24 the CIS Claims -- speaking specifically to CIS, it's going  
25 to send policy to claims because the claims department

1 might get a phone call that says, hey, I'm X; I've got a  
2 claim. The first thing they are going to do is they're  
3 going to confirm that the policy exists.

4 Q. Slow down.

5 A. I'm sorry. So CIS Claims is going to get a phone call  
6 about a claim. They need to confirm that the policy is  
7 active, that data transfer to claims allows that to be  
8 done.

9 Q. Okay.

10 A. Then you come down to -- then you come down to profit,  
11 and you notice that there are three sub-boxes under that.  
12 So data has got to go to those three boxes. So if you add  
13 all those boxes up, one, two, three, four, five, six, there  
14 are seven places that data has got to be sent. There has  
15 to be something that manages that sending. At the  
16 defendant, that something is named Premium Activity  
17 Recording System, and it is that system that was modernized  
18 using Blaze Advisor 7.1.

19 Q. And that then is the Premium Booking application?

20 A. As defined by the defendants' documents, yes.

21 Q. And by modernizing this process resulting in the  
22 Premium Booking application, is this the instance where,  
23 because all that back-end -- all that back-end reporting  
24 was done using Blaze Advisor and much faster, they were  
25 able to capture the market -- the 25 million dollar market

1 opportunity you spoke about?

2 A. That is correct. Think about it not in terms of that  
3 specific opportunity, but if you have a new opportunity in  
4 front of you -- it might be aviation insurance. It might  
5 be automobile manufacturers. At the end of the day, to  
6 bring that product to market, in addition to all of the  
7 work I talked about in the product management function and  
8 the information technology function, you've got to be able  
9 to book and report to the statutory authorities about that  
10 premium. That's what this is.

11 Q. Okay. And now we turn to this slide. It is about  
12 Premium Booking modernization. It may be that we have  
13 spoken about it. I think so. This was another -- this  
14 also used Blaze Advisor version 7.1?

15 A. Correct.

16 Q. All right. Let's go to Texas Accident Prevention  
17 Systems. Oops. And we have these bullet points of yours.  
18 We've described it already as relating to workers' comp in  
19 Texas. This application used version 7.1 of Blaze Advisor?

20 A. Correct.

21 Q. Okay. Unless you see something that we haven't spoken  
22 about on Texas Accident Prevention Systems, I'm ready to  
23 move on.

24 A. I will only say one sentence additional, if allowed.

25 Q. Yeah.

1 A. This is a use of Blaze Advisor to fulfill a statutory  
2 reporting requirement. It's not participating at this  
3 point with anything with the "bind, book, issue." It's  
4 just saying, hey, this is a policy. Here are the state  
5 requirements. Read it.

6 Q. And hence, we put it in the compliance category?

7 A. Correct. And I'm sure that any insurance company would  
8 prefer not to be slapped on the wrist and fined for not  
9 complying with the requirement.

10 Q. Okay. Then let's go to IRMA. And have we spoken about  
11 this in terms of the guardrails?

12 A. Yes.

13 Q. It used Blaze Advisor version 7.1, from your review?

14 A. Yes.

15 Q. I think maybe we've spoken about each of the bullet  
16 points on this slide. Do you agree?

17 A. I agree.

18 Q. Okay. Then let's go to the utility applications, and  
19 we didn't define that before. So what do you mean by  
20 utility application?

21 A. They are applications that are deployed to make  
22 people's lives easier but specifically as it relates to the  
23 "bind, book, issue" process of selling insurance.

24 Q. But it does -- does it --

25 A. I'm sorry?

1 Q. Do these utility applications -- although not being  
2 policy administration systems, do they connect to the  
3 selling of insurance?

4 A. Absolutely.

5 Q. So at the defendants' utility applications were  
6 commercial -- are these the utility applications at the  
7 defendants?

8 A. Yes.

9 Q. We have spoken about CUW-IM, Broker Site in Canada. We  
10 will speak more about Exari in Europe. We haven't really  
11 addressed that. And we've talked about CIS Claims.

12 So the Blaze Advisor function at Commercial  
13 Underwriter Workstation. That is what it was?

14 A. Yes.

15 Q. And I think we're spoken about that.

16 A. I agree.

17 Q. Okay. And then Brokersite, we haven't really spoken  
18 about that, client information access portal for brokers.  
19 How did Brokersite use the Blaze Advisor function?

20 A. It is a tool made available to the independent agents  
21 and brokers to discover information about their  
22 policyholders. So if -- using a very, very simple example,  
23 if the business calls the independent agent and broker and  
24 says, when is my next premium due? In this deployment and  
25 in this function, the independent agent would go to the

1 Brokersite, look up that policy and say, oh, look, you have  
2 a thousand books due on August the 1st.

3 Q. This is an ease of doing business benefit?

4 A. Correct.

5 Q. Exari, data capture and document generation. What was  
6 that?

7 A. Exari never deployed into production but built using  
8 Blaze Advisor, is a use of Blaze Advisor to create an  
9 interview tool to walk someone through an interview  
10 process, an agent and broker, or potentially a customer,  
11 asking them questions, and then the application Exari is  
12 going to fill out paperwork based on those answers.

13 Q. For the purpose of selling the insurance policy?

14 A. Agreed.

15 Q. And then CIS Claims, claims categorization, I think I  
16 could use a little better understanding of what that means.

17 A. CIS Claims is the predictive modeling use that looks  
18 back at information and says, did we get the price right?  
19 So when you think about categorization, really, there are a  
20 couple, right? There is, I got it right, or I didn't get  
21 it right, and if I didn't get it right, I missed by --

22 Q. Okay. Got it. Understood.

23 Now let's go through each of them in a little  
24 more detail. Commercial Underwriting Workstation Inventory  
25 Management, this -- in terms of these bullet points, from

1 your review of the documents, was it used by 6,000 users in  
2 the United States and Canada?

3 A. Based on the documents, yes.

4 Q. You had the bullet point, If CUW Inventory Management  
5 is down and work orders cannot be created or reviewed, what  
6 did you see from the documents that was the consequence of  
7 CUW-IM being down?

8 A. I believe the direct words of the document, and I  
9 believe it here is the -- there was little to no "bind" --  
10 "bind, book, issue" taking place. This is the deployment  
11 to -- for inventory management, and so inventory management  
12 makes sure that any individual participant in the  
13 underwriting process, it makes sure that their in-box does  
14 not -- in-box of "bind, book, issue," in-box of any other  
15 type of underwriting work, be it underwriting endorsements  
16 or underwriting renewals, it's making sure that's what's in  
17 their in-box is within their defined capacity. And if it  
18 does not, taking that work and getting it into some other  
19 similar skill set person whose in-box can absorb the work.

20 Q. And if that can't be done, then the work doesn't get  
21 done?

22 A. If that can't be done, the work doesn't get done.

23 Q. You have here that commercial -- Chubb Commercial  
24 Insurance processes over 5 billion dollars worth of  
25 business with CUW-IM?



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1 A. It does.

2 Q. Is that on an annual basis or what time frame?

3 A. No. That is annually.

4 Q. You also have on here that there were 1.22 million  
5 transactions per month. That was CUW-IM?

6 A. Correct.

7 Q. And some of these other bullet points we've spoken to,  
8 it uses Blaze Advisor 7.1?

9 A. It does.

10 Q. And then you have the estimated cost to purchase or  
11 redevelop CUW at between 5 and 10 million dollars?

12 A. Yes. That's from the same data source as before.

13 Q. Same data source as before, this Duff & Phelps?

14 A. Correct.

15 Q. Let's go to Brokersite. We've spoken about it a bit.  
16 So the interface between Brokersite and Evolution was what,  
17 as you saw from the documents?

18 A. The Blaze Advisor is used in Brokersite.

19 Q. Mm-hmm (Yes).

20 A. And it participates in that -- in that interface. And  
21 as I mentioned before, Brokersite's job is to get  
22 information back to the agent and the broker as it relates  
23 a specific policy, suite of policies, customer.

24 Q. And as you've already said, the Canadian application  
25 called Evolution used Blaze Advisor?

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1 A. Yes.

2 Q. Now let's go to Exari. We haven't heard much about  
3 that. You identified it a moment ago as the  
4 document-authoring. What did you see from the -- it's a  
5 document-authoring application.

6 Tell us what you learned from the defendants'  
7 documents regarding Exari and its use of Blaze Advisor?

8 A. It was designed to be used with EZER, which I will  
9 refresh your memories. That is the European executive risk  
10 policy administration system. It was the -- through most  
11 of the software development life cycle and 30 days before  
12 moving to its scheduled move to production date, it was  
13 tabled and put on the shelf.

14 Q. Okay. You have on that slide that the development of  
15 Exari began in 2013?

16 A. I do.

17 Q. And that's from the documents of the defendants?

18 A. Yes.

19 Q. And then the date on which it was put on the shelf, in  
20 your words, was January 27, 2016?

21 A. Yes, again from defendant documents.

22 Q. You have Blaze Advisor version 7.1?

23 A. Correct.

24 Q. Okay. CIS Claims. We've spoken about it already as a  
25 predictive analytic application. Maybe you can describe

1       how actuaries used this information and its relationship to  
2       CSI Express?

3       A.   CSI Express is a very large application.  It has a  
4       policy administration component.  It has a claims  
5       component.  Excuse me.  Both of those components have  
6       information that the actuarial department needs, as I  
7       pointed out in the Premium Booking business slide.

8       Q.   Yeah.

9       A.   So what is going to happen is, periodically, CIS Claims  
10       is going to take that information, policy claims, and it's  
11       going to go through a predictive modeling process that --  
12       as I said before, it just basically determines, is this  
13       price right, or is this price not right and provide -- when  
14       the answer is "not right," provide insight for reasons as  
15       to why they now consider it not right.

16       Q.   And that's the actuarial element of it?

17       A.   Yes, that is the actuarial element of pursuing the  
18       adequate accurate predictable price.

19       Q.   And then the ultimate result of that analysis, that  
20       actuarial analysis, how is that then used?

21       A.   It's going to go back to the corporate underwriting  
22       product management function, who will then use that to take  
23       it into their underwriting guidelines and standards  
24       definitions and potentially pricing definitions.

25       Q.   I'm sorry.  And then if the underwriting guidelines are

1 written into Blaze Advisor, it gets written there?

2 A. It comes back to the deployment of the rules. In this  
3 case, in Blaze Advisor.

4 Q. And this used version 7.1?

5 A. Correct.

6 Q. So we've gone through the insurance industry, the  
7 process of selling insurance, the applications that use  
8 Blaze Advisor, all of your analysis of what they did and  
9 why, and the defendants' documents. Let's use this slide  
10 to summarize your overall view.

11 A. My overall view from a time frame of defendants' use of  
12 Blaze Advisor begins in 2006 midyear with the -- with the  
13 RFI that says, we've got a corporate growth strategy that  
14 now involves a tactic of moving to small and mid-market  
15 specialty, and we have -- we recognize that that results in  
16 increased transactional volume, which as staffed today, we  
17 can't handle. In addition, our systems are not really  
18 built for this segment of the market. And, oh, by the way,  
19 we have a corporate expense strategy that will not allow us  
20 to increase staff, so we need to find a way to do this  
21 within our existing staff.

22 We that with that RFI, there were a series of  
23 events that took place. Some of them referenced in other  
24 testimonies that I have not seen those documents, but I  
25 have seen the ultimate license agreement that comes out of

1 that. Blaze Advisor was licensed to be a technical  
2 capability applied to the execution of those tactics.  
3 Right?

4 Blaze Advisor was deployed initially through  
5 ARP-1 and 2. That, according to the documents, was a  
6 success, and so then they started to -- to do two things.  
7 Number one is expand the use of Blaze Advisor. I believe  
8 predictive modeling now came onto the table pretty quickly.  
9 But they also went through an internal marketing process to  
10 improve the knowledge of concepts of business rules  
11 management and decision management in other parts of the  
12 organization.

13 Q. Okay. And then on this slide we show the applications  
14 that were -- all of the applications that ultimately used  
15 Blaze Advisor?

16 A. These are all of the uses of Blaze Advisor.

17 Q. That we have just gone through.

18 And then were you able -- in your judgment, what  
19 was the extent of -- in your judgment, what was the value  
20 that the defendants realized using Blaze Advisor in selling  
21 insurance?

22 A. So when I talk about the value, I go back to the quote,  
23 "buying, book, issue process." Can I make things faster?  
24 Can I make them more consistent? Can I be more agile as it  
25 respects to the opportunity in the marketplace and to

1 responding to statutory and regulatory changes? Can I stay  
2 more in compliance with both those statutory and those  
3 underwriting -- corporate underwriting requirements? Can I  
4 be easier to do business with? Can I take on -- can I  
5 scale? Can I take on more business with my existing very,  
6 very valuable staff?

7 And if I do that, take on more business with my  
8 valuable staff, but I reduce the amount of use of human  
9 capital in the "buying, book process," I can now  
10 concentrate on agents and brokers and spending time with  
11 them in developing that relationship, my conclusion is that  
12 Blaze Advisor deployed by agents in some places, not all,  
13 added significant value to the defendants' business of  
14 selling insurance.

15 Q. Okay. And in drawing this judgment about the  
16 significant value of selling insurance, do I understand you  
17 correctly that the attributes or the features that resulted  
18 in the significant value were the ones you just described:  
19 Speed, agility, precision and so forth?

20 A. That is correct.

21 Q. Did you have -- we saw in some of the slides of the  
22 defendants where some other insurance companies had done  
23 the work to quantify or measure the improvements that they  
24 realized with Blaze Advisor.

25 Did you have that -- any kind of information like

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1       that available to you?

2       A.   I did not.

3       Q.   Is it necessary for you to have that kind of  
4       quantification of information to draw your judgment that  
5       Blaze Advisor added significant value?

6       A.   There are two different questions there in the  
7       underwriting world I live in.  The first is, did it?  The  
8       second is, how much did it?  Okay?  I had more than enough  
9       information, documentation, 10,000-plus pages, to determine  
10      that it did it.

11               I don't need a tape measurer or a stopwatch to  
12      know that computers executing transactions is faster than  
13      humans because I was a human underwriter, and I've worked  
14      with many companies to -- to deploy technology into those  
15      processes.  I don't know -- I don't need to measure  
16      variation in compliance because I know a computer system  
17      with a set of facts is going to make the same decision with  
18      those facts every time, and I know -- I have been out on  
19      underwriting audits and audited underwriting functions --  
20      that humans cannot do that.

21      Q.   So overall as a -- overall, Blaze Advisor added  
22      significant value in the selling of insurance by the  
23      defendants?

24      A.   My opinion is that Blaze Advisor added significant  
25      value to the -- to the defendants' process of executing the

1 "bind, book, issue" which is how I describe the process of  
2 selling insurance where deployed.

3 MR. HINDERAKER: Thank you for your time.

4 THE WITNESS: You're welcome.

5 THE COURT: Ms. Godesky.

6 MS. GODESKY: Thank you.

7 THE WITNESS: Thank you. I'm overburdened here.

8 **CROSS EXAMINATION**

9 BY MS. GODESKY:

10 Q. Good morning, Mr. Whitener.

11 A. Good morning, Ms. Godesky.

12 Q. You understand I represent the defendants in this case,  
13 right?

14 A. I do, in fact.

15 Q. This is your first time testifying as an expert in  
16 court, right?

17 A. That is correct.

18 Q. So no court or arbitrator has ever qualified you as an  
19 expert in rules-based software?

20 A. This is correct.

21 Q. Your advanced degree is a college degree from Virginia  
22 Commonwealth University where you majored in education,  
23 correct?

24 A. I have a degree in education, a Bachelor of Science  
25 from Virginia Commonwealth University. I struggle with the



1 word "advanced."

2 Q. It's a degree in education from Virginia Commonwealth,  
3 right?

4 A. That is correct.

5 Q. You've never worked for a software company, correct?

6 A. Correct.

7 Q. And you've never worked as a software developer,  
8 correct?

9 A. Mostly correct -- well, no. I'm sorry. Correct.

10 Q. During direct examination beginning of yesterday, you  
11 talked about the work you've done at various insurance  
12 companies, right?

13 A. Various insurance companies and various vendors who  
14 sell goods and services to the insurance companies.

15 Q. Okay. So I want to walk through the chronology of your  
16 employment that Mr. Hinderaker took you through and asked  
17 you a few different questions.

18 So you were at the Hartford, which is an  
19 insurance company, from the late 1970s to the early 1990s?

20 A. Mid-1993.

21 Q. Okay. And you did not do any work with decision  
22 management software at that job because the software did  
23 not exist in that time period, correct?

24 A. Correct.

25 Q. And then you were at the Prudential, which is another

1 insurance company, right?

2 A. Again, correct.

3 Q. And that was in the mid-1990s?

4 A. Yes.

5 Q. And there was no use of decision management software  
6 there, correct?

7 A. As you would define decision management software, that  
8 is correct.

9 Q. The rules software programs we're all here to talk  
10 about, right?

11 A. Correct.

12 Q. Then you moved on to a mid-sized personal auto  
13 insurance company in the late 90's to the early 2000s,  
14 right?

15 A. Correct.

16 Q. And there was no decision management software  
17 experience there because that company had decided to write  
18 all of its business rules in code by software engineers,  
19 right?

20 A. Initially, yes.

21 Q. And you've never been a member of a technology  
22 department at an insurance company, correct?

23 A. Correct.

24 Q. That means you've never worked as a software engineer  
25 or computer developer who writes code for an insurance

1 company, right?

2 A. Partially correct -- mostly correct.

3 Q. And you have no experience sitting down and writing  
4 rules into computer applications using high-level  
5 programming language because to the extent that was  
6 happening at the insurance companies you worked at, other  
7 people were doing that, correct?

8 A. Mostly correct.

9 Q. And you've never been a technology architect for an  
10 insurance company, correct?

11 A. Correct.

12 Q. Okay. So then your next job was, you were a  
13 business -- you were at a business process outsourcer in  
14 Montana in the early 2000s, right?

15 A. Absolutely correct.

16 Q. And that company did not use rules-based software?

17 A. Correct.

18 Q. Then in the mid-2000s, you joined a midsize property  
19 and casualty insurance company called American Reliable,  
20 right?

21 A. Again correct.

22 Q. And you were there from '04 to '05?

23 A. Yes.

24 Q. No decision management software in use at the time you  
25 joined, correct?

1 A. Correct.

2 Q. And while you were there -- you talked about this on  
3 direct a little bit -- you had a role in selecting Duck  
4 Creek as the policy administration software for American  
5 Reliable, correct?

6 A. Yes, but I became responsible for the implementation  
7 using Duck Creek.

8 Q. Okay. And you -- you left, though, after about a year  
9 at the company, correct?

10 A. I believe it was a little closer -- something in that  
11 vicinity.

12 Q. Yeah. You were only there from '04 to '05, right?

13 A. Yes.

14 Q. So you didn't see the implementation of Duck Creek  
15 because you moved on?

16 A. Correct.

17 Q. And you didn't work with any rules-based software  
18 programs while you were at American reliable, like ODM or  
19 Blaze or Drools, right?

20 A. Right.

21 Q. Then you went to another insurance company, Unitrin  
22 Specialty, from '05 to '09, right?

23 A. Correct.

24 Q. They sell insurance, but no experience with decision  
25 management software at Unitrin, right?

1 A. Correct.

2 Q. Then you went to a small technology services company  
3 called Discoverture Solutions?

4 A. Correct.

5 Q. And that position didn't have anything to do with  
6 rules-based software?

7 A. That also is correct.

8 Q. And so as we've seen over the course of your career,  
9 you've worked a few different insurances companies but  
10 never at Chubb, right, or ACE?

11 A. Correct.

12 Q. And so at the time when you sat down to form your  
13 expert opinions in this case -- and your first report,  
14 right, Mr. Whitener, was in April of 2019?

15 A. Correct.

16 Q. You had never used any decision management software,  
17 correct?

18 A. Agreed.

19 Q. And that necessarily includes Blaze?

20 A. That necessarily includes Blaze.

21 Q. So when you sat down to provide all those expert  
22 opinions in this case about the value of Blaze to Chubb,  
23 you had never used Blaze or any computer applications that  
24 included Blaze, correct?

25 A. That is correct.

1 Q. You had never used IBM ODM?

2 A. Correct.

3 Q. You had never used Drools?

4 A. Correct.

5 Q. And you had never used Red Hat Decision Manager?

6 A. Correct.

7 Q. So that first report you submitted in this case in  
8 April 2019, with all the appendices, it was more than 50  
9 pages. Sound right?

10 A. I'm fairly certain I can say yes to that one.

11 Q. And it was all about how Blaze contributes to revenue  
12 at Chubb, right? All the opinions you just offered with  
13 Mr. Hinderaker about speed and ease of doing business and  
14 agility, correct?

15 A. Mostly.

16 Q. But when you wrote those 50 pages of opinions, you  
17 could not speak to what Blaze looks like to someone who is  
18 going in and using it to implement rules, correct?

19 A. Correct.

20 Q. And you had never used a computer application that  
21 incorporated Blaze?

22 A. Correct.

23 Q. Then about a month later, you did your second report in  
24 this case, and that was due in May of 2019, right?

25 A. Sounds right.

1 Q. And that was another 25 pages.

2 A. Okay.

3 Q. Focused on the value of Blaze to Chubb?

4 A. Approximately.

5 Q. Focused on the value of Blaze to Chubb?

6 A. Again, correct.

7 Q. So then as of May 2019, you submitted 75 pages of  
8 written material about the value of Blaze to Chubb, but you  
9 still hadn't seen the process of implementing rules into  
10 Blaze, correct?

11 A. Would you restate the date, please?

12 Q. As of May 2019, that second report, 75 pages of  
13 opinions about the value of Blaze to Chubb, but you still  
14 hadn't seen the process of implementing rules, correct?

15 A. At some point in that time frame, I had been given a  
16 demonstration of Blaze by FICO, but I can't date stamp that  
17 quite as precisely as you're asking.

18 Q. Well, you were scheduled to provide sworn deposition  
19 testimony in this case on June 27th, 2019. Does that sound  
20 right?

21 A. Yes.

22 Q. Okay. And that's the process the jury has heard about  
23 where you have to come to a conference room and sit down,  
24 provide sworn testimony about all the opinions you've  
25 offered, right?

1 A. Yes.

2 Q. And you're questioned by Chubb's lawyers for the first  
3 time, correct?

4 A. Correct.

5 Q. And one day before your deposition about those 75 pages  
6 of opinions that you'd offered, FICO's lawyers had you sit  
7 down and watch a Webex presentation about Blaze. Sound  
8 right?

9 A. Mostly.

10 Q. So that was the first demonstration ever of how Blaze  
11 works, and it was done after all your opinions were in,  
12 those 75 pages of opinions, right?

13 A. Yes.

14 Q. Now, you didn't actually use Blaze during this  
15 demonstration. You weren't coming up with the rules and  
16 then putting them into the software yourself. That was  
17 someone at FICO, right?

18 A. In the demonstration?

19 Q. Correct.

20 A. I created a rule.

21 Q. You created a rule, but mostly it was someone at FICO  
22 running the demo, right?

23 A. Correct.

24 Q. And the demo was about 90 minutes?

25 A. I couldn't remember.



1 Q. Why don't you look in the binder in front of you.  
2 There is a copy of your deposition transcript from June  
3 2019.

4 A. I'm there.

5 Q. And why don't we look at page 21 to see if that  
6 refreshes your recollection?

7 A. 21 in the box, correct?

8 Q. Yes, please.

9 A. Correct.

10 Q. A 90-minute demonstration?

11 A. Correct.

12 Q. Okay. And that demo is not particular to any  
13 particular company's use of Blaze, right?

14 A. It was not.

15 Q. And it wasn't specific to the insurance industry in any  
16 way?

17 A. No, it was not.

18 Q. The demo had nothing to do with Chubb's use of Blaze?

19 A. Correct.

20 Q. And, in fact, the demo was actually a college  
21 admissions scenario, correct?

22 A. Yes.

23 Q. So when you sat down to provide sworn testimony to  
24 Chubb's lawyers about these 75 pages of opinions, that  
25 90-minute demo on college admission scenarios from FICO was

1 the full extent of your firsthand experience of Blaze,  
2 correct?

3 A. Yes, but --

4 Q. "Yes" is good enough for now. Thank you, Mr. Whitener.

5 Do you have a general understanding that  
6 peer-reviewed literature is a term that's used for  
7 literature that has been read and vetted by people other  
8 than those who wrote it?

9 A. Yes.

10 Q. And the idea behind peer-reviewed literature is you  
11 have someone looking at the publication and vetting your  
12 ideas and conclusions to make sure they're sound, right?

13 A. Yes.

14 Q. And you have never published any peer-reviewed  
15 literature on decision management software or rules  
16 software, right?

17 A. Correct.

18 Q. And you haven't conducted any studies about the nature  
19 and impact of rules software on businesses, correct?

20 A. I'm sorry. Restate that, please.

21 Q. You have not conducted any studies, scientific studies,  
22 on the impact of rules software in business, correct?

23 A. Correct.

24 Q. And before you rendered your expert opinions in this  
25 case about the value of Blaze, you did not read or consider

1 any peer-reviewed literature about the value of rules  
2 software, correct? It's not something you cited.

3 A. Correct.

4 Q. And before you rendered your expert opinions in this  
5 case, you didn't read or consider any peer-reviewed  
6 literature examining the use of using high-level  
7 programming language to code rules in businesses, right?

8 A. Correct.

9 Q. And you aren't aware of, and you haven't identified,  
10 any literature or studies that compare the efficiency of  
11 using rules software to the efficiency of having software  
12 engineers write code themselves, right?

13 A. Correct.

14 Q. Now, before you rendered your expert opinions about all  
15 the value that Blaze brought to Chubb, you didn't speak to  
16 anyone at Chubb who had actually worked with Blaze, right?

17 A. Correct.

18 Q. And you said during direct examination that you read  
19 some deposition testimony from witnesses in this case,  
20 right?

21 A. I did.

22 Q. Those transcripts were sent to you by FICO's lawyers?

23 A. Yes.

24 Q. You didn't read every deposition transcript in this  
25 case, but you read the ones that they sent you, correct?

1 A. Correct.

2 Q. So let's talk about what you reviewed. You reviewed  
3 testimony from Benjamin Baer at FICO, right?

4 A. Correct.

5 Q. We've heard from him. He was one of FICO's first  
6 witnesses, and he works in FICO marketing, right?

7 A. Yes.

8 Q. You also read testimony from Chris Ivey, he was another  
9 witness from FICO in this trial, right, and he talked about  
10 all those statements of work with Chubb?

11 A. Yes.

12 Q. And then you read the testimony of Lawrence Wachs, a  
13 FICO/Blaze salesperson, right?

14 A. Again correct.

15 Q. And then you reviewed the deposition testimony of one  
16 witness from Chubb, right? That's Henry Mirolyuz.

17 A. No. There were two depositions.

18 Q. That was the only Chubb witness whose deposition  
19 transcript FICO's lawyers sent you, correct?

20 A. Correct.

21 Q. And before you rendered all your opinions about the  
22 value of Blaze to Chubb, you didn't review the testimony of  
23 Mr. Claudio Ghislanzoni, correct?

24 A. Correct.

25 Q. Nor the testimony of Mr. Ramesh Pandey, correct?

RANDOLPH DICKLEY WHITENER CROSS

1 A. Correct.

2 Q. And you also didn't review the testimony of any Chubb  
3 underwriters, right, folks like Alissa Theberge or Mike  
4 Schraer, right?

5 A. Correct.

6 Q. And you didn't read the testimony of anyone at Chubb  
7 involved in the process of writing rules using Blaze, like  
8 Ellen Garnes?

9 A. Correct.

10 Q. Before you rendered your opinions in 1029, you also  
11 didn't speak to any other people in the insurance industry,  
12 people at companies other than Chubb, about their  
13 experiences with Blaze or decision management software?

14 A. Correct.

15 Q. You didn't do a formal survey, right?

16 A. Correct.

17 Q. And you didn't have any informal conversations either,  
18 correct?

19 A. Correct.

20 Q. Now, we saw some anecdotes about how other insurance  
21 companies use Blaze. Mr. Hinderaker showed you that on the  
22 screen, right?

23 A. Yes.

24 Q. We're going to come back to that, but before you  
25 rendered your expert opinions, you didn't try to do a study

1 examination how the country's largest insurance companies  
2 are using rules-based software as opposed to coding by  
3 software engineers, right?

4 A. Correct.

5 Q. You also haven't conducted any survey of FICO's  
6 customers regarding their experience with Blaze, right?

7 A. Correct.

8 Q. And you haven't spoken to other rules software vendors  
9 about their software programs, correct?

10 A. Mostly correct.

11 Q. Now, Mr. Whitener, as a general baseline, based on your  
12 direct testimony, I'm assuming we can agree that the  
13 insurance business is complex, right?

14 A. I have described it that way before. There are aspects  
15 that are very, very simple, but generally speaking, it is a  
16 complex industry.

17 Q. Okay. And I want to talk about some of the factors  
18 that drive an insurance company's ability to earn revenue,  
19 okay? So the relationship between a broker and an agent,  
20 on one hand, and the insurance company on the other, that  
21 can affect where customers want to buy their insurance,  
22 right?

23 A. Yes.

24 Q. And Blaze doesn't have anything to do with the  
25 interpersonal relationships that Chubb employees build with

brokers and agents, right?

A. Mostly correct.

Q. Blaze isn't taking people out to the ball game or out to dinner or a networking lunch, right?

A. Correct.

Q. And the insurance products that a company sells are also part of what determines the success of an insurance company, right?

A. Yes.

Q. Can be a meaningful contributor to what makes a company successful, right?

A. Without products, there is no revenue, correct.

Q. And insurance products are developed based on the expertise of the insurance company and the know-how of the people who work there, correct?

A. In combination with statutory requirements of the states in which they decided to do business and the state requirements for the products they decided.

Q. Fair enough. And you have not identified any particular insurance product that was specifically developed at Chubb because of Blaze, right?

A. Correct.

Q. An error-free billing process is also an important factor in attracting customers to an insurance company, right?

1 A. I would say that different, but it is an important  
2 factor.

3 Q. And Blaze has no role in Chubb's billing process,  
4 right?

5 A. I saw no documentation that indicated that.

6 Q. Meaning you haven't seen anything connecting Blaze to  
7 billing?

8 A. Correct.

9 Q. It's also very important that an insurance company have  
10 a strong process for handling claims once they come in,  
11 right?

12 A. Correct.

13 Q. And that's because brokers and agents aren't going to  
14 have any desire to sell policies on behalf of insurance  
15 companies that's not efficiently handling claims, right?

16 A. Correct.

17 Q. And it's important that an insurance company pays the  
18 right amount of money when a claim comes in, and they do so  
19 pretty fast?

20 A. I'm going to say it slightly differently. It is  
21 important that insurance companies pay the right amount,  
22 and it's important that they get that right amount to the  
23 policyholder quickly.

24 Q. And Blaze, I think as you said during your direct  
25 examination, was not used in the claims handling side of



1 Chubb at all, right?

2 A. Correct.

3 Q. Underwriting is another aspect of how insurance  
4 companies make money. You were an underwriter, right?

5 A. I was, yes.

6 Q. And from your experience as an underwriter, you know  
7 that your personal human judgment is crucial to the  
8 performance and execution of your duties as an underwriter,  
9 right?

10 A. I'm not sure I agree with it.

11 Q. Okay. Let's look at your deposition transcript at page  
12 47.

13 A. Certainly.

14 Q. And if I could direct you to page 47, line 7. Let me  
15 know when you're there.

16 A. Patience, counselor.

17 I'm there.

18 Q. You were asked at your deposition "Question: Your  
19 personal judgment was crucial in the performance of your  
20 underwriting duties, correct?"

21 "Answer: Yes."

22 That was your testimony at your deposition,  
23 right?

24 A. Yes.

25 Q. Your emotional quotient or your emotional intelligence

1 was also crucial to your work as an underwriter, right?

2 A. Yes.

3 Q. And Blaze doesn't improve underwriters' ability to  
4 exercise emotional intelligence and connect with people,  
5 right?

6 A. Yes, but --

7 Q. I'll take the "yes," thank you.

8 Let's focus on the technology aspects of running  
9 an insurance company. You understand that Chubb uses many,  
10 many different technologies to sell insurance, right?

11 A. Yes.

12 Q. Now, Mr. Hinderaker made a point of opening your  
13 testimony this morning by pointing out that Duck Creek  
14 technology was located in the CSI Express application  
15 before Chubb purchased its license to use Blaze. Do you  
16 remember that?

17 A. I do.

18 Q. But before you rendered your expert opinions in this  
19 case about the so-called importance of Blaze, you didn't do  
20 anything to investigate how many other technologies were  
21 deployed at the same time as Blaze at Chubb, correct?

22 A. Correct.

23 Q. And, in fact, at the time you rendered your expert  
24 report and gave all these opinions, you denied that Chubb  
25 could possibly be using hundreds of other technologies in

1 addition to Blaze, right?

2 A. Yes.

3 Q. You said, wow, you know, I haven't seen that holy-cow  
4 number, right, that there would be more than 100 different  
5 technologies, right?

6 A. Correct.

7 Q. But now you've seen testimony from Mr. Pandey and  
8 Mr. Ghislanzoni confirming that there were hundreds of  
9 other technologies in use, right?

10 A. I have.

11 Q. And you didn't consider that at all before you wrote  
12 those 75 pages of opinions about the value of Blaze to  
13 Chubb, correct?

14 A. Correct.

15 Q. And you also have not done anything to measure the  
16 relative contribution that Blaze made to all these things  
17 like speed, ease of doing business, agility, as compared to  
18 the benefits that Chubb got from other technologies, right?  
19 You didn't look into that.

20 A. Correct.

21 Q. And certainly technologies other than Blaze are  
22 contributing to Chubb's ability to acquire revenue, right?

23 A. Yes.

24 Q. But you haven't made any effort to determine how much  
25 of a direct contribution those other technologies are

1 making to revenue, right? You haven't looked at that.

2 A. Correct.

3 Q. Now, the jury heard Mr. Ramesh Pandey talk about how  
4 Duck Creek is the brain of CSI Express. And you heard  
5 that, too, right?

6 A. I did.

7 Q. But you didn't do anything to figure out how much Blaze  
8 is contributing to CSI Express relative to Duck Creek,  
9 correct?

10 A. Correct.

11 Q. And that same would be true for the CUW-IM application,  
12 right? You didn't do anything to examine, well, how much  
13 is Blaze doing in CUW-IM as compared to the other  
14 dozen-plus technologies, right? You didn't look at that?

15 A. Correct.

16 Q. You talked about the rules that were in place at Chubb,  
17 right?

18 A. Yes.

19 Q. And you understand, though, that when Blaze was used at  
20 Chubb, it did not process all of the rules that Chubb was  
21 running in the course of selling insurance, right?

22 A. Yes.

23 Q. And I think you said yesterday that when you sat down  
24 to review the actual rules that Chubb was running, you  
25 wanted to make sure that your thoughts about them made

1 sense, so you spoke with a consultant, right, a Brian  
2 Sacco?

3 A. Brian Sacco.

4 Q. Sacco. And you characterized him as someone who is  
5 highly knowledgeable about rule repositories, right?

6 A. I did.

7 Q. And you spoke to Mr. Sacco because you personally are  
8 not someone who is highly knowledgeable about rule  
9 repositories. That's why you needed to talk to him, right?

10 A. Yes.

11 Q. And before you rendered all your expert opinions in  
12 this case, you didn't do anything to investigate how many  
13 other rules Chubb was running in its business, right? You  
14 said it would be pure, unadulterated speculation for you to  
15 try to figure out how many non-Blaze rules Chubb was  
16 running.

17 A. I did.

18 Q. So in offering all these opinions about the value of  
19 Blaze to Chubb, you didn't do anything to examine the rate  
20 at which the Blaze technology was adopted at Chubb, right?  
21 You didn't look at how many rules were they deciding to run  
22 with Blaze versus how many rules are they having software  
23 engineers write. You didn't run that comparison.

24 A. That is correct.

25 Q. Now, when Chubb uses Blaze in the selling of insurance,

1 the process of defining the rules is decided and  
2 articulated by people at Chubb, not people at FICO, right?

3 A. Yes.

4 Q. And the process of defining rules, you know from your  
5 years in the insurance industry, takes substantial  
6 experience, right?

7 A. Yes.

8 Q. If the rules do not accurately reflect an insurance  
9 company's risk appetite and its view of what's an adequate  
10 premium to charge, the result is, you're going to lose  
11 money, right?

12 A. I would say that the result is negative things are  
13 going to happen, which usually leads to that conclusion.

14 Q. Without good rules, Mr. Whitener, an insurance company  
15 cannot make money, right?

16 A. Correct.

17 Q. And to the extent rules are being used to speed things  
18 up, speed is only good if you're speeding up decisions that  
19 are good for the insurance company, right?

20 A. I agree.

21 Q. If you're making a lot of quick decisions to bind and  
22 renew policies that are not profitable, that's not a good  
23 thing.

24 A. Agreed.

25 Q. Now, you also spoke on direct about how Blaze can

1       increase speed compared to having software engineers  
2       programming the code themselves, right? So-called hard  
3       coding by some.

4       A. Or professional coding, as it was described.

5       Q. Or professional coding, right?

6               Vanessa, can we pull up slide 23, please, from  
7       Mr. Whitener's presentation? Thank you.

8               This is one of the slides you showed the jury  
9       during your direct examination, right?

10      A. It is.

11      Q. And you wrote -- under hard-coding the rules, you  
12      wrote, "Hard coding requires substantial IT resources to  
13      write business rules and changes to business rules in  
14      computer language into application software." Do you see  
15      that?

16      A. I do.

17      Q. But you don't have any evidence that when folks at  
18      Chubb used Blaze, they were able to stop using IT sources,  
19      right?

20      A. Correct.

21      Q. And, in fact, you heard Mr. Pandey and Mr. Ghislanzoni  
22      explain from the perspective of Chubb architects that the  
23      Chubb business folks weren't able to write rules into  
24      Blaze, right? You heard that.

25      A. Yes, but --

1 Q. You didn't consider that testimony from Mr. Pandey or  
2 Mr. Ghislanzoni before you offered expert opinions in this  
3 case, correct? You didn't read their testimony?

4 A. Correct.

5 Q. And you, of course, don't have any personal knowledge  
6 of the IT infrastructure at Chubb that would allow you to  
7 say, oh, no, the business people are writing all the rules,  
8 correct?

9 A. Oh, absolutely correct.

10 MS. GODESKY: Thank you, Vanessa. We can take  
11 that down.

12 BY MS. GODESKY:

13 Q. Now, on this topic of your opinion that Chubb realized  
14 benefits from Blaze by increasing speed, you don't know  
15 whether Blaze actually increased the speed of responding to  
16 requests for quotes, correct?

17 A. I know that it increased speed. I do not know  
18 precisely how much it increased speed.

19 Q. Let's look at your deposition transcript at page 135.

20 A. In the box, correct?

21 Q. Please.

22 A. Bear with me.

23 I'm there.

24 Q. So at page 135, line 14, the question was, "Do you know  
25 whether Blaze increased the speed of response to quote



1 requests in Federal?

2 "Answer: I performed no quantitative analysis in  
3 this process, no. I do not know."

4 That was your testimony, correct, Mr. Whitener?

5 A. Correct.

6 Q. And you also can't say whether Chubb was actually able  
7 to increase its speed of making renewal offers to  
8 customers, correct?

9 A. Based on the same premise, I understand -- I understand  
10 that the renewal does not have to go to a human, it gets  
11 done faster.

12 Q. Mr. Whitener, you do not know whether Chubb increased  
13 the speed of making renewal offers because of Blaze,  
14 correct?

15 A. I do not know how much.

16 Q. Let's look at your deposition transcript at page 135.

17 A. I'm there.

18 Q. Actually, let's look at 136, line 8.

19 A. I'm there.

20 Q. "Question: So you just don't know whether Federal  
21 increased the speed of making renewal offers because of its  
22 use of Blaze, correct?

23 "Answer: That is correct."

24 That was your testimony back in 2019, correct?

25 A. Yes, but --

1 Q. The "yes" is fine. Thank you.

2 A. You're welcome.

3 Q. And you also don't know, Mr. Whitener, whether Blaze  
4 actually allowed Chubb to increase its speed to market by  
5 ensuring compliance with all those reporting requirements  
6 you talked about, correct?

7 A. Yes, but --

8 Q. The answer is yes, right, Mr. Whitener?

9 A. Yes.

10 Q. Now, you talked on direct examination, and we saw on  
11 the slide, your opinion that Blaze improved the ease of  
12 doing business at Chubb, right?

13 A. Yes.

14 Q. But you did not try to quantify in this case whether  
15 Blaze actually improved Chubb's ease of doing business,  
16 correct?

17 A. Yes. Allow me to point out, I quantified. I measured  
18 none of these things.

19 Q. You don't know whether Chubb increased the ease of use  
20 for agents and brokers by using Blaze in certain  
21 applications. You don't know that, right?

22 A. I don't know how much.

23 Q. You don't know that they did, correct?

24 A. Yes, but --

25 Q. Mr. Whitener, let's look at your deposition testimony

1 from June at page 140.

2 A. I'm there.

3 Q. Page 40 [sic], line 25, you were asked --

4 A. Counsel -- I'm sorry. Go ahead.

5 Q. "Is it correct to say that you do not know whether  
6 Federal increased its ease of use for agents and brokers by  
7 way of those three bullet points?" And those were your  
8 bullet points about the value of Blaze, right?

9 And you answered, "That is correct." That was  
10 your testimony, correct?

11 A. Counselor, I'm at page 140.

12 Q. Yes.

13 A. Is that where you are?

14 Q. Yes. At line 25?

15 A. I'm sorry. I'm on the wrong line.

16 Q. You were asked, "Is it correct to say that you do not  
17 know whether Federal increased the ease of use for agents  
18 and brokers by way of those three bullet points," and that  
19 was a reference to all your opinions, right?

20 A. You are correct.

21 Q. And your answer was, "You are correct." Right?

22 A. You are correct.

23 Q. You also testified on direct examination, and we saw  
24 the slides about how Blaze allowed Chubb to precisely price  
25 its policies, right? That was another thing you talked

1 about with Mr. Hinderaker.

2 A. Yes.

3 Q. But you did not measure in this case whether Blaze  
4 actually improved Chubb's ability to define accurate and  
5 adequate pricing, right?

6 A. Correct.

7 Q. And you can't speak at all to whether Chubb actually  
8 increased the precision and accuracy of its quotes to  
9 customers?

10 A. Correct.

11 Q. You also don't know whether Chubb increased the  
12 precision and adequacy of its renewal offers, do you?

13 A. Correct, but --

14 Q. It's correct, right?

15 A. Correct.

16 Q. There was also talk during your direct examination  
17 about how the benefits of Blaze allowed Chubb to grow in  
18 the Small Commercial and mid-market segments. Do you  
19 remember that?

20 A. I do.

21 Q. But you don't know whether it's, in fact, true that  
22 Chubb grew in the Small Commercial and mid-market segments  
23 because of Blaze, right? You can't say that.

24 A. Correct.

25 Q. Vanessa, if we could put up slide 37, please.

1 This is another slide you showed the jury during  
2 your direct examination, right?

3 A. It is.

4 Q. And there is this quote, "Technology is a competitive  
5 weapon." And you said, oh, yes, you know, from my  
6 examination of the document, Chubb agrees with that, right?

7 A. Yes.

8 Q. This is a discussion about a particular segment of the  
9 Chubb business where 80 percent or more of submissions were  
10 not touched by humans as reported in this document, right?

11 A. Yes.

12 Q. You understand from sitting through this trial that  
13 this comment has nothing to do with Blaze, right? This is  
14 a discussion about a different area at Chubb that used Duck  
15 Creek technology, right?

16 A. I wasn't, but yes.

17 Q. You have no reason to believe this is a reference to  
18 Blaze Advisor software, correct?

19 A. No. I believe it's a general statement by the CEO.

20 MS. GODESKY: Your Honor, I'm about to switch  
21 topics, if it's a good time to break.

22 THE COURT: Let's keep going a few more minutes.  
23 Got about eight minutes.

24 MS. GODESKY: Okay.

25 BY MS. GODESKY:

1 Q. Mr. Whitener, during direct examination, you walked us  
2 through all the computer applications that you say use  
3 Blaze, right?

4 A. Yes.

5 Q. You have never used any of those computer applications?

6 A. Correct.

7 Q. Let's start with CSI Express. CSI Express is a policy  
8 administration system, right?

9 A. It is.

10 Q. And like pretty much every policy administration  
11 system, it's complex, correct?

12 A. Correct.

13 Q. It involves many different technologies?

14 A. It does.

15 Q. But before you rendered all your opinions in this case  
16 about the value of Blaze and CSI Express, you didn't do  
17 anything to measure how significant a part of CSI Express  
18 Blaze is, right?

19 A. Yes.

20 Q. You have not done any analysis of what amount of  
21 improvement to speed, ease of doing business or adequacy of  
22 pricing is attributable to Blaze in CSI Express as opposed  
23 to the application as a whole, correct?

24 A. Correct.

25 Q. That was outside the scope of the responsibilities you

1 had in this case, right?

2 A. Correct.

3 Q. In fact, before rendering expert opinions in this case,  
4 you spent less than one second reviewing the components of  
5 CSI Express that had nothing to do with Blaze, correct?

6 A. Correct.

7 Q. And you spoke a lot on direct examination about how  
8 Blaze must have brought speed to CSI Express, but you  
9 haven't done any work to try to determine whether you're  
10 talking about one day, two days or hours, right?

11 A. You are correct.

12 Q. You didn't look at that.

13 A. Correct.

14 Q. And also in the context of CSI Express, you do not know  
15 whether CSI Express actually increased the speed of  
16 response to requests for quotes at Chubb, right?

17 A. Yes, but --

18 Q. You do not know, right, Mr. Whitener?

19 A. Yes.

20 Q. You don't know.

21 A. Yes.

22 Q. And you do not know whether the speed of making renewal  
23 offers through CSI Express was actually increased because  
24 of Blaze. You cannot say that, right?

25 A. I cannot say how much. I can say I believe it was.

1 Q. Mr. Whitener, before rendering all your opinions in  
2 this case, you gave zero thought to whether you could have  
3 measured all this contribution to speed that you say is  
4 attributable to Blaze, correct?

5 A. Zero?

6 Q. Zero. Sound right?

7 A. No. I took zero action based on those thoughts.

8 Q. Let's look at your deposition page 153.

9 A. I'm there.

10 Q. Line 19. "Question: In your mind, would it be even  
11 possible to measure the contribution that Blaze has to the  
12 speed that you've discussed CSI Express creating?

13 "Answer: Having had the privilege of giving that  
14 question zero thought, I can't answer it."

15 That's the testimony you gave, correct?

16 A. It is.

17 Q. Let's talk about Profitability Indicator. That's  
18 another application you talked about, correct?

19 A. Correct.

20 Q. And you said it increased speed relating to renewals in  
21 response to requests for quotes, correct?

22 A. I'm sorry. Repeat that.

23 Q. You talked about how it increases speed because of  
24 Blaze, right?

25 A. I did.



1 Q. And Profitability Indicator is part of the CSI Express  
2 application?

3 A. It is.

4 Q. Counted as a separate application on your direct  
5 examination, but it's part of CSI Express, right?

6 A. It is an additional application deployed inside of CSI  
7 Express.

8 Q. And you don't know whether Profitability Indicator,  
9 including Blaze, actually contributed to increased  
10 revenues, right?

11 A. Excuse me. I didn't -- yes, I did not measure  
12 anything.

13 Q. Let's move on to DecisionPoint. You talked about all  
14 of the value that Blaze brought to DecisionPoint during  
15 your direct examination, right?

16 A. Yes.

17 Q. And DecisionPoint, just like Profitability Indicator,  
18 is part of CSI Express, correct?

19 A. Yes.

20 Q. You're sort of counting it separately on your slides,  
21 right?

22 A. Yes.

23 Q. You don't know whether DecisionPoint actually  
24 contributed to revenue at Chubb, correct?

25 A. Yes, but --

1 Q. It's correct, right, Mr. Whitener?

2 A. Yes.

3 Q. Next up was Evolution. Based on your review of the  
4 record in this case, you agree that Evolution uses many  
5 different technologies in addition to Blaze, right?

6 A. Yes.

7 Q. And you do not know whether the speed of response to  
8 quotes or requests for renewal were actually increasing  
9 because of Blaze, right?

10 A. Yes, but -- yes.

11 Q. You don't know?

12 A. Yes.

13 Q. And you haven't done anything to determine whether the  
14 use of Blaze in Evolution actually improved the  
15 availability of underwriting, correct?

16 A. Correct.

17 Q. Then you talked about Adapt. Adapt is a policy  
18 administration system, right?

19 A. It is.

20 Q. It is complex, correct?

21 A. Yes.

22 Q. And you cannot say whether any of the benefits that you  
23 talked about on direct examination with Mr. Hinderaker were  
24 actually realized by Chubb, correct?

25 A. Correct.

1 Q. Cornerstone is another policy administration system for  
2 all those surety bonds, right?

3 A. Correct.

4 Q. Also complex.

5 A. Correct.

6 Q. And you don't know whether any of the benefits that you  
7 spoke about on direct examination were actually realized by  
8 Chubb because of Blaze, correct?

9 A. Yes.

10 Q. Then we have these compliance systems. Premium Booking  
11 is one of them, right?

12 A. Yes.

13 Q. That's also in CSI Express, right?

14 A. Yes.

15 Q. And the process underlying the Premium Booking  
16 application used at Chubb is complex.

17 A. Yes.

18 Q. But before rendering all your expert opinions about the  
19 value of Blaze and Premium Booking, you didn't do anything  
20 to investigate what systems and software other than Blaze  
21 are used in Premium Booking, correct?

22 A. Correct.

23 Q. And you haven't conducted any analysis to determine  
24 whether Premium Booking actually enabled Chubb to bring new  
25 products to market faster, right?

1 A. Correct.

2 Q. And you haven't done any analysis to determine whether  
3 Blaze's incorporation in Premium Booking meant that Chubb  
4 could report data for their new products faster, right?

5 A. Correct.

6 Q. Next was TAPS, the Texas Accident Prevention System.  
7 And you are aware that witnesses have testified in this  
8 case that the function Blaze performed in TAPS could have  
9 just as easily have been performed by an Excel spreadsheet,  
10 right?

11 A. Yes.

12 Q. You can't speak to whether or not that's true. You  
13 don't know.

14 A. I know that the documents say that.

15 Q. But you agree, it's certainly possible that other  
16 software could have been used in TAPS to perform exactly  
17 the same function as Blaze, right?

18 A. Yes.

19 Q. And you don't know whether Blaze's inclusion in TAPS is  
20 what actually ensured that each policy written in the  
21 workers' compensation line of business at Chubb was in  
22 compliance with Texas regulations, correct?

23 A. May I ask you to restate?

24 Q. You don't know whether Blaze's inclusion in TAPS is  
25 what was actually ensuring that all of these workers' comp

insurance policies satisfied Texas regulations, correct?

A. Correct.

Q. Then you talked about IRMA. You have not determined whether IRMA actually contributes to revenue at Chubb by ensuring that quoted and issued policies are compliant, right?

A. Correct.

Q. Then there was CUW inventory management. That was another application you walked us through, correct?

A. Yes.

Q. It uses many different technologies, right, Mr. Whitener?

A. If you're referring to CUW, that is correct.

Q. And you cannot say anything as to whether the inclusion of Blaze in CUW-IM actually accelerated inventory management at Chubb, correct?

A. Correct.

THE COURT: Ms. Godesky, are you still at a convenient breaking point?

MS. GODESKY: Sure.

THE COURT: Or --

MS. GODESKY: Yeah, it's fine. Thank you.

THE COURT: All right. Members of the Jury, we're take our lunchtime recess. Be back in the courtroom at one o'clock.

1 THE CLERK: All rise for the jury.

2 (Jury exits.)

3  
4  
5 (In open court without the Jury present.)

6 THE COURT: See you at ten to 1:00.

7 ( Lunch recess.)

8 **Wednesday Afternoon Session of Fair Isaac versus Federal**

9  
10 12:56 p.m.

11 **IN OPEN COURT**

12 **(JURY NOT PRESENT)**

13 THE COURT: All right. A housekeeping matter,  
14 just so you know, we may -- well, we'll just get going.

15 I'm going to lay down some guidance for the  
16 parties with respect to Mr. Waid's testimony and tell you  
17 what I see in the demonstrative slides, and then there's a  
18 group of slides I have a question about.

19 So just by way of general guidance -- and,  
20 Mr. Waid, you need to be heads up on this too.

21 During your testimony you can't use the phrase  
22 "hypothetical negotiation." You can be asked and you can  
23 respond to questions about negotiating a license that is  
24 four years in duration.

25 I'm going to prohibit counsel from using the

1 phrase "transitional or bridge license" because of the way  
2 that connects to the question of infringement and breach of  
3 contract. That said, it is a fact and you can certainly  
4 discuss the fact that the license is terminated. And the  
5 parties are now -- well, if they were to negotiate a  
6 license for four years.

7 MR. HINDERAKER: Or whatever the right period is.

8 THE COURT: Whatever the right period is. I  
9 mean, it's from stem to stern, it's approximately four  
10 years. Different applications are different lengths. So I  
11 think the best approach is four years.

12 MS. GODESKY: Your Honor, may I just clarify  
13 something on that?

14 THE COURT: Sure.

15 MS. GODESKY: So there's different elements to  
16 this claim, and so they have the four-year scenario for,  
17 you know, the enterprise ACE entity.

18 THE COURT: Right.

19 MS. GODESKY: But then there's also this question  
20 of -- and I think the question that's presented to the jury  
21 is, what would have been the fair market value of a license  
22 that would have covered use by Chubb Canada, Chubb Europe  
23 and Chubb Australia from 2006 to 2016, under the scenario  
24 where they weren't included in the first place, right, and  
25 so they are seeking ten years there.

1 THE COURT: But how is -- given that the court  
2 has found no territorial restriction in the license, and  
3 they are not a third party, so what's the, why is that  
4 ten-year period at issue?

5 MS. GODESKY: I am under the impression that they  
6 are -- you're asserting a breach of contract claim.

7 THE COURT: Okay.

8 MS. GODESKY: Based on --

9 THE COURT: They're a third party based on the  
10 client definition?

11 MS. GODESKY: Yes. And so Mr. Waid's slides  
12 include ten-year periods that the, those international  
13 affiliates, right, were using Blaze in their particular  
14 applications. And so, you know, this isn't just about  
15 hypothetical negotiation in 2016 post-termination.

16 There's also a huge driver of the numbers here is  
17 hypothetical negotiation sitting there in 2006, also  
18 including these three Chubb affiliates that they say  
19 weren't included in the original license.

20 THE COURT: Based on the definition of "client."

21 MS. GODESKY: Correct.

22 MR. HINDERAKER: I think the plaintiff should  
23 also get a chance to restate the plaintiff's claims.

24 The definition of client is one element of it,  
25 which depends on whether those foreign insurance companies



1 are subsidiaries or not. Also a different element of it is  
2 paragraph 3.1 of the license agreement says, "Only  
3 employees of Chubb & Son may use Blaze Advisor."

4 We learned yesterday from Mr. Taylor that no  
5 employees of Chubb & Son are outside of the United States  
6 of America.

7 So the client, we have -- there's different  
8 routes to the same result. It is part of FICO's claim that  
9 the use for those many years outside of the United States  
10 was a violation of the license agreement.

11 THE COURT: Okay. Yep.

12 And so for that then you're going to have to be  
13 clear about negotiating a license for that use for that  
14 period. Okay? Again, we're not going to call it a  
15 hypothetical -- you guys aren't calling it a hypothetical  
16 negotiation.

17 And it will, of course, be made clear, it needs  
18 to be clear, that the basis for that claim is not a  
19 territorial restriction.

20 MR. HINDERAKER: Exactly so.

21 THE COURT: Understood?

22 MR. HINDERAKER: Can I ask one other question,  
23 Your Honor?

24 THE COURT: You may.

25 MR. HINDERAKER: I have used, you know, as you

1 know from our letters on this issue, I have used the word  
2 "transition license," because it was a word that  
3 Mr. Schreiber used, kind of an industry term. I'm happy to  
4 use -- and in my judgment a transition license is exactly  
5 the license that you have described, one license that's  
6 come to a conclusion, and it's now necessary to negotiate  
7 another license for a period of years.

8 I'm happy to use whatever term the court finds  
9 appropriate.

10 THE COURT: There is no way around the notion  
11 that the jury is going to understand that that license  
12 period occurs after the putative end of the first license.  
13 And so that fact just is not capable of being kept from the  
14 jury.

15 MR. HINDERAKER: All right.

16 THE COURT: I'm asking you to not use the phrase  
17 "transitional" or "bridge," though frankly they may well  
18 use that in their own heads.

19 MR. HINDERAKER: Yeah. I'm happy to use any  
20 word. Is there just not a shorthand phrase to use,  
21 apparently, is what we're saying.

22 THE COURT: Precisely.

23 MR. HINDERAKER: I see. Fine. That's fine too.

24 I don't know if we should -- what I'm thinking  
25 about is, I think some of the slides have -- I'd have to

1 look at the slides.

2 THE COURT: Yeah, a few of them do, and they will  
3 have to take the word "transitional" off.

4 MR. HINDERAKER: Yeah, I'm happy with the --

5 THE COURT: Right.

6 MR. HINDERAKER: I'm just trying to be straight  
7 up.

8 THE COURT: Yep. No. I appreciate it.

9 MS. GODESKY: Your Honor, may I?

10 THE COURT: Hang on. No. Let me finish.

11 MS. GODESKY: Oh, sorry.

12 THE COURT: When you're talking about the  
13 negotiation or the things that would go into this  
14 hypothetical license, the fact witnesses, Mr. Waid, is  
15 allowed to discuss the factors that FICO would consider in  
16 those negotiations. He may discuss factors that he has  
17 observed the other side of the table to consider, but you  
18 have to have the foundation to say that.

19 Not what would I consider if I were them, but  
20 what have I seen them consider. That can all come in.

21 That said, let me turn to the pricing  
22 methodology, and I'm going to jump to sort of the end of  
23 it, and then I will hear what you have to say about whether  
24 it was disclosed.

25 In my view, slides 28 through 40 cannot be used

1 because you can't connect the pricing methodology through a  
2 witness to the Chubb use. Mr. Waid can testify to that  
3 pricing methodology, how it works, how it's supplied, and  
4 you can testify to math. Okay? This plus this equals  
5 that.

6 You just cannot connect it to Chubb, because then  
7 you are, in my judgment, presenting the damages analysis  
8 that was excluded that was included in Zoltowski's report.

9 Having said that, so in my judgment slide 27 can  
10 come in or can be shown. And you can explain the various  
11 components as they -- I'm trying to describe this  
12 carefully. So you can say that 15 or 10 of the Chubb  
13 applications were large, two of them were very large. You  
14 can explain the facts about Chubb's usage. The witness  
15 can't connect those two dots.

16 And in final argument, you can only connect those  
17 dots by arguing that that is what a willing buyer and  
18 seller would have agreed upon. It's argument. The jury is  
19 free to disagree with you.

20 So, Ms. Godesky, now what was your point or  
21 question?

22 MS. GODESKY: I apologize for interrupting. I  
23 okay. Thought you were summoning the jury.

24 THE COURT: No. No.

25 MS. GODESKY: My other issue, Your Honor, was

1 just with these slides that talk about transition license  
2 negotiations, and one of the entries is, "Level of effort  
3 to/impact of stopping use." And then there's a sliding  
4 scale as to whether the customer can turn Blaze off  
5 immediately or if it's going to be time consuming and  
6 significant. And that is --

7 THE COURT: Which slide is that?

8 MS. GODESKY: There's an example of it on slide  
9 41.

10 THE COURT: I don't have that printed in front of  
11 me, but go ahead.

12 MS. GODESKY: My concern is just that that takes  
13 us out of willing buyer, willing seller land into world  
14 where the buyer is under threat of, if you don't buy this  
15 license, you know, we're going to sue you for breach or sue  
16 you for copyright infringement. That is how I understand  
17 this entry on that slide.

18 THE COURT: I don't necessarily understand it  
19 that way.

20 But, Mr. Hinderaker, go ahead.

21 MR. HINDERAKER: Mr. Waid will -- Mr. Waid's  
22 understanding of that element is nothing, is 180 degrees  
23 from Ms. Godesky's understanding of that element.

24 There are some circumstances and some clients in  
25 his experience where he's encountered that it is FICO, more

1 FICO support to the client. It is useful to the client to  
2 make this, to remove Blaze Advisor from, from their systems  
3 by the end of the term.

4 And if there is more, if there is some extended  
5 support that's required, some level of effort in that, well  
6 then that affects the price. If there's not, then it  
7 doesn't affect the price. It has nothing to do with any  
8 putative or infringing nature of the circumstances.

9 It's just one of the things that he's  
10 experienced. In his experience, he has clients that say I  
11 want to move off of Blaze Advisor. Let's figure out a term  
12 for that and how to do it. And sometimes FICO's services  
13 are useful to the client to do that. That's a fact.

14 THE COURT: And I understand it that same way. I  
15 would contextualize it by saying, when you are entering  
16 into negotiations for a license that has a known fixed  
17 term, which is our hypothetical negotiation, one of the  
18 factors that the parties might discuss is knowing that the  
19 term is four years and what are you going to do to extract  
20 the software.

21 Those are factors that I would think they would  
22 negotiate over.

23 MR. HINDERAKER: And in fact have.

24 THE COURT: Yeah. The only other issue with  
25 respect to this -- well, I think that's sufficient. Okay.

MR. HINDERAKER: Yeah, and then I think there's been -- there was a challenge to 43. This is Mr. Waid's experience that these various factors have different influencing weight, you know, on his negotiations, have had different influencing weight on his negotiations.

And so this isn't, this is just testifying to his experience and how those factors have played out.

THE COURT: Understood.

Ms. Godesky, on those slides.

MS. GODESKY: It's because the same language I just pointed Your Honor to was on that slide as well, so --

THE COURT: Understood.

So take off the phrase "transition license negotiations" and maybe insert "fixed term license negotiations," if you can.

MR. HINDERAKER: Well, we're certainly going to do business -- are we on, which slide are you on, Your Honor?

THE COURT: Well, I was on 41.

MR. HINDERAKER: Yeah, so we --

THE COURT: I see.

MR. HINDERAKER: Experience with fixed term license negotiations.

THE COURT: Yes.

MR. HINDERAKER: That's good.

1 THE COURT: Going back to 38, on the top of that,  
2 in this context I'm not sure this is appropriate. The  
3 slide is labeled "Standard Blaze Advisor Annual ELA Pricing  
4 For Post-Termination Global Use."

5 MR. HINDERAKER: The -- we've talked a lot about  
6 named application pricing, and many of the slides are doing  
7 the standard FICO pricing for the named application. The  
8 defendants have made arguments about, well, let's do  
9 enterprise pricing. And ELA stands for enterprise license  
10 agreement.

11 And so if we were going to follow the basic  
12 guidelines, the standard guidelines of FICO for pricing on  
13 an enterprise, from an enterprise point of view, then that  
14 gets translated into an annual price as well. And that's  
15 what slide 38 does. We start not from an application-based  
16 construct, but we start from an enterprise-based construct.  
17 That then gets translated into the annual fee for the fixed  
18 term.

19 THE COURT: And I think the issue, at least for  
20 me, with respect to slide 38 is, again, not directly tying  
21 it to Chubb. So the language here is clearly tying to  
22 Chubb specifically as opposed to the pricing methodology.  
23 If you are dealing with an entity, you know, we, our  
24 standard pricing methodology is X dollars per billion of  
25 revenue or whatever.



1           So I assume they have some kind of guidelines  
2           like that where they're -- in other words, the point is, I  
3           don't think we can do a pricing in the evidence tied to  
4           Chubb, because that runs afoul of Judge Wright's order that  
5           it's not what FICO would charge.

6           And so you could talk about what they normally do  
7           or what their standard pricing methodology is for a company  
8           of this to that.

9           MR. HINDERAKER: Well, I am confused at this  
10          point.

11          THE COURT: Okay.

12          MR. HINDERAKER: Judge Wright clearly said that  
13          FICO can introduce its evidence using its standard pricing  
14          methodology and the use of Blaze Advisor by defendants.  
15          This is a lawsuit against Chubb. And the notion that FICO  
16          would be introducing evidence untethered to the defendants  
17          or untethered to the facts of the case, I'm just not  
18          tracking.

19          THE COURT: And what I'm trying to describe is,  
20          you put in the standard pricing methodology. You can put  
21          in the facts of the case, okay, through this witness or you  
22          can remind the jury through there witness. In final  
23          argument, you can connect those two dots in argument and  
24          say why that reflects what a willing buyer and a willing  
25          seller would agree to.

1 But if presented through a witness, connecting  
2 the dots in my view runs afoul of that line about not what  
3 FICO wants to charge or Federal wants to pay.

4 MR. HINDERAKER: And he's never going to say this  
5 is what FICO wants to charge. He's simply going to say  
6 this is where we start, and then we go into the  
7 negotiations with the various factors. None of these  
8 slides are intended to say what FICO would charge.

9 Perhaps I could get some guidance.

10 THE COURT: If the starting point is, this is  
11 what would normally be our standard and that's where we  
12 would start our negotiations --

13 MR. HINDERAKER: Yes, exactly so.

14 THE COURT: That's fine.

15 MR. HINDERAKER: This is what this is.

16 THE COURT: Okay.

17 MR. HINDERAKER: And so, for example, on slides  
18 11 through, 11 through 26.

19 THE COURT: Yep.

20 MR. HINDERAKER: This is taking the FICO  
21 documents of the pricing guidelines and matrix. These are  
22 the standard. These are the things against which FICO  
23 prices on a standard basis, not the full negotiations, but  
24 the starting point that Judge Wright permits, and then it's  
25 supplied to the information we have from the case regarding

1 each of the applications.

2 The process inside of FICO is to take this  
3 information, make a judgment, large, very large, medium,  
4 small; and then go to from that, then I then go to 27 that  
5 you permit, and say, well, then now we have all these  
6 smalls and mediums and how does that translate out.

7 The slides that you are forbidding are the ones  
8 that just did that math.

9 THE COURT: And what would you present the slides  
10 28 to 40 as showing, then?

11 MR. HINDERAKER: As showing the math as you or we  
12 can show the math. We can add it up from your earlier  
13 order, and those slides only, only do that. They add it  
14 up.

15 If titles have to change, but they simply add it  
16 up. It's not what we claim. The jury has to decide that.  
17 I think the court's instructions to the jury on  
18 hypothetical negotiation are going to have more factors. I  
19 think the defendant is free to ask about more factors.

20 Mr. Waid is constrained by his own experience,  
21 and these slides are constrained by his experience. None  
22 of this is intended to be, none of it is, according to the  
23 guidance of this court and Judge Wright, what FICO desires  
24 or is subjective sense of damages.

25 THE COURT: If -- well, Ms. Godesky, I know

1       you're going to want to weigh in. Go ahead.

2               MS. GODESKY: For sake of the record, I think  
3       Your Honor understands this, but because I said it to  
4       Ms. Solomon off the record this morning, I will just say it  
5       now. I mean, we continue to object to this as an end run  
6       around the *Daubert* ruling, because essentially, you know,  
7       Mr. Zoltowski was not excluded on qualification grounds.

8               It was this is irrelevant under the law. So we  
9       have that objection. With regard to the slides, if Your  
10      Honor is considering letting those slides from 28 to 40 be  
11      used, I think the titles absolutely need to change. We  
12      cannot have these references to pre-termination and  
13      post-termination, because then the implied meaning, right,  
14      is this is what we would charge Chubb.

15              The other point I just want to make, Your Honor,  
16      and I don't know that this is necessarily critical to these  
17      sides, but I keep hearing the court say, you know, the  
18      hypothetical negotiation is this four-year license, a  
19      four-year term license.

20              And from our perspective, FICO is free to argue  
21      that, but we will be arguing that a willing buyer and a  
22      willing seller sitting down in 2016 to negotiate a license  
23      that would cover this use --

24              THE COURT: Right.

25              MS. GODESKY: -- could be perpetual, because

1       there's no cancellation fee, right? You can get a  
2       perpetual license to use Blaze without cancellation. And  
3       so why in the world would a willing buyer ever pay on a  
4       four-year basis when they could get a perpetual license for  
5       much less money?

6               And that is exactly what we believe the evidence  
7       will show happens. So I just, I want to put that on the  
8       court's radar, because I think both sides have different  
9       views, but I think as far as the argument goes, and  
10      ultimately when we're discussing the charge to the jury,  
11      our position will be, there shouldn't be an instruction  
12      that it's a four-year duration.

13             The instruction should be a hypothetical  
14      negotiation that would cover this use.

15             MR. HINDERAKER: And we can cross that bridge  
16      when we --

17             THE COURT: We can.

18             MR. HINDERAKER: Later. This doesn't impact what  
19      we are talking about here.

20             THE COURT: It doesn't. I understand your point.  
21      And it's a fair point. The law is that it is a license  
22      that covers the use.

23             So one thing I want to make -- so we've  
24      cannibalized the half hour we gained.

25             MS. GODESKY: We still saved time.

1 THE COURT: Right. Crystal clear. These, even  
2 the calculations that are included in these slides, it  
3 needs to be very clear in my view that this is information  
4 that FICO would consider in setting out on these  
5 negotiations. Okay?

6 In other words, not this is what we would charge.  
7 This is what we would demand. This is how we would come  
8 into it, understanding our own pricing.

9 MR. HINDERAKER: Exactly so. And with that  
10 guidance, and the testimony will be that way. And I  
11 believe your earlier order, Your Honor, has been exactly  
12 that we have the right to add it up. So with that right of  
13 adding it up, I would appreciate clarity in the sense that  
14 are these slides now in, if it is very clear that we're  
15 just adding it up?

16 THE COURT: Yes. It's just got to be clear.

17 MS. GODESKY: And the titles are changing.

18 THE COURT: And the titles are changing.

19 MR. HINDERAKER: And I'm happy to change them.  
20 If we can have agreement on which ones should be changed, I  
21 would be happy to do it right away. Mr. Mayleben is here.

22 THE COURT: Ms. Godesky, are you able to provide  
23 that answer?

24 MS. GODESKY: Yes.

25 THE COURT: Or do you need me to do it?

MS. GODESKY: Well, is there just a way just to anonymize it in terms of, you know, the references to Federal Insurance Company in these particular apps, and we could just have, you know, no specific reference to Chubb and ACE and termination and pre-termination. And it's just, you know, large application, small application, medium application and the country.

MR. HINDERAKER: Well, now the jury doesn't know that it relates to the lawsuit at all.

THE COURT: Well, I do think -- you see this is where -- this is where we get back to where I think we crossed the line.

When you do use the names of the applications, it risks spilling into, this is the damages analysis as it relates to Chubb.

MR. HINDERAKER: You have to instruct the jury on the hypothetical negotiation. We have to be clear that this is just the starting point.

THE COURT: Right.

MR. HINDERAKER: And these slides that are using that pricing matrix against the applications, there's no title on those slides. That's just standard pricing methodology of FICO relevant to this case.

MS. GODESKY: Right. So which slide is that, Mr. Hinderaker?

1 THE COURT: Looking at 28, for example.

2 MR. HINDERAKER: 11 through 26 are just that.

3 There's no title on it.

4 THE COURT: 11 through 26 are fine. I think it's  
5 the 28 through 40 where the connection comes.

6 MS. GODESKY: Right. And so we would just say --

7 MR. HINDERAKER: That's where we're adding up.

8 MS. GODESKY: -- take Federal off. Take ACE off.

9 Take post-termination pre-termination and just  
10 application -- take off all the names of the applications.  
11 And then it's just application of the pricing guide to an  
12 anonymous purchaser whose usage happens to match Federal's,  
13 right?

14 So you have the country. You have the size, and  
15 then Mr. Waid can testify about how that is applied under  
16 the pricing guide and do his math but without pointing to  
17 Adapt and EZER and Federal and ACE.

18 MR. HINDERAKER: Well, that doesn't make any  
19 sense because the pricing, the standard pricing, you have  
20 to set an application based on what it is. Some are small  
21 for the reasons that they, because of what they are. Some  
22 are very large because of the reasons for what they are.

23 Slide 28 doesn't mention, you know, the names of  
24 the parties. It's just -- but we do have to have some  
25 connection in reality to the actual lawsuit.



1 MS. GODESKY: I'm not objecting to saying that  
2 it's large or medium or small.

3 MR. HINDERAKER: But it's not in the air. It's  
4 in this lawsuit. And what is large and what is medium and  
5 what is small? And I want the jury to understand that  
6 Mr. Waid isn't making this up. It's based upon facts.  
7 It's based upon data.

8 MS. GODESKY: Your Honor, I just think that's not  
9 the damages question that the jury is being asked, right.  
10 I mean the damages question they're going to be asked is  
11 the fair market value that would cover these, this sized  
12 application, right?

13 THE COURT: Right.

14 MS. GODESKY: The use. But they're not going to  
15 be asked to apply it to Chubb and ACE and Adapt and  
16 Profitability Indicator. That's not the damages question.  
17 It's objective.

18 MR. HINDERAKER: You don't get to the damages  
19 question against the defendants until you apply  
20 Judge Wright's guidance and let us talk about what -- how  
21 Blaze Advisor was being used, what was the use of Blaze  
22 Advisor. We have to connect it up to the facts of the  
23 case. I'm happy to have any title that --

24 And we could say standard fees before  
25 negotiation, standard fees pricing methodology, whatever

1 would take away the anxiety about this, because I'm not  
2 fighting against your guidance or Judge Wright's.

3 MS. GODESKY: Your Honor, I would just point out,  
4 the slides that we're not arguing about do that. Right? I  
5 mean, Mr. Waid is presumably going to spend a lot of time  
6 walking through all the slides that detail Chubb's use, the  
7 names of the application, the number of rules, whether he  
8 would characterize it as small, medium or large.

9 That's all going to be out there. But then when  
10 we pivot to, you know, this objective willing seller,  
11 willing buyer, it should be anonymized.

12 MR. HINDERAKER: Well, the willing buyer, willing  
13 seller is going to be again from his experience of what the  
14 factors are that he faces. I don't think he's going to be  
15 able to speak to the particular circumstances of the  
16 defendants. That's up to them to put in the evidence.

17 But the jury's going to hear the court's  
18 instructions on those. Mr. Waid will identify from his  
19 experience what licensees have raised, and the defendants  
20 are able to raise whatever else they want. The jury, as we  
21 know, is going to make the determination of the amount.

22 But as Judge Wright said, we get to tell -- we  
23 get to start from our standard pricing methodology because  
24 that's what the real world is. The real world starts with  
25 that. The real world then has negotiations within that.

1 And we're just following your guidance as well, Your Honor.

2 THE COURT: Well, we're -- all right. We need to  
3 move on.

4 Here's where we are disagreeing: I agree you can  
5 put in the standard pricing methodology. You can add it  
6 up. You can say -- and through the witness.

7 MR. HINDERAKER: Yes.

8 THE COURT: Okay. You know, if you had a  
9 circumstance or if you're negotiating a license with six  
10 large, two very large, you can talk about that, what would  
11 be the standard pricing methodology that FICO would use in  
12 such a circumstance.

13 I do think having the names of the apps on the  
14 slides then risks confusing the jury that this is a damages  
15 model.

16 Now, in final argument, these slides are fine.  
17 Okay?

18 MR. HINDERAKER: Are slides 11 through --

19 THE COURT: No. Those are fine.

20 MR. HINDERAKER: Those are fine.

21 THE COURT: Right. It's 28 through 40 where we  
22 have the application names that we risk connecting the dots  
23 in a way that says this is our damages claim.

24 MR. HINDERAKER: I think I can live with this as  
25 long as I have -- with 11 through 27, because I can't --

1 THE COURT: Right. 11 through 27 are fine.

2 MR. HINDERAKER: They are fine.

3 MS. KLIEBENSTEIN: I have a suggestion.

4 THE COURT: Yes.

5 MS. KLIEBENSTEIN: What are we on, 28?

6 THE COURT: Yeah. It's 28 through 40 that we're  
7 talking about.

8 MS. KLIEBENSTEIN: What if we just take the  
9 application names out of the left-hand column. Is that  
10 okay with you?

11 MS. GODESKY: That's what I suggested.

12 MR. HINDERAKER: Okay. All right.

13 THE COURT: Yeah. Let's just do that and then --

14 MR. HINDERAKER: As long as those slides are  
15 good -- all right.

16 THE COURT: Right.

17 MR. HINDERAKER: Then, then we'll take those off.

18 MS. GODESKY: And changing the titles.

19 THE COURT: And changing the title.

20 MS. GODESKY: Thank you.

21 MR. HINDERAKER: And then -- and change the title  
22 to 41 and change the -- sure. We can work that. We can  
23 work with that.

24 THE COURT: Okay.

25 MS. GODESKY: And, Your Honor, just before the

1 jury comes in, since we have all these slides with numbers  
2 again, I hate to raise this, but there's been a series of  
3 gratuitous comments from FICO's counsel about my objections  
4 and how unfortunate it is that I'm not agreeing to put  
5 their demonstratives into evidence.

6 And so I would just ask before we go down that  
7 road again in front of the jury that they not make those  
8 comments and suggest it's my fault that we need to belabor  
9 these numbers.

10 THE COURT: I assumed they were suggesting it was  
11 my fault. But those comments won't be made.

12 MS. GODESKY: Thank you.

13 THE COURT: All right. Let's bring them in.

14 1:33 p.m.

15 **IN OPEN COURT**

16 **(JURY PRESENT)**

17 THE COURT: Go ahead and be seated.

18 Members of the jury, you ended up with an hour  
19 lunch. The lawyers and I ended up with 20 minutes. So  
20 rest assured, we're working hard.

21 Come on up, Mr. Whitener.

22 THE WITNESS: Thank you.

23 BY MS. GODESKY:

24 Q. Good afternoon Mr. Whitener.

25 A. Good afternoon.

1 Q. So before the lunch break, we were going through all  
2 the different computer applications at Chubb that used  
3 Blaze that you talked about with Mr. Hinderaker, right?

4 A. Agreed.

5 Q. And the next one I want to talk about is Brokersite.  
6 That is another application that you talked about during  
7 direct, correct?

8 A. Correct.

9 Q. And you were in court yesterday, and you've heard  
10 Mr. Mirollyuz at Chubb testify that Brokersite does not use  
11 Blaze Advisor, correct?

12 A. Correct.

13 Q. And you, of course, never worked at Chubb, so you don't  
14 have a basis to dispute that with your personal knowledge,  
15 right?

16 A. Correct.

17 Q. CIS Claims is another application that you talked about  
18 with Mr. Hinderaker, right?

19 A. Correct.

20 Q. And even though it's called claims, it is not a claims  
21 handling application, right?

22 A. Correct.

23 Q. And you cannot say whether the use of CIS Claims  
24 contributed to Chubb's revenue, correct?

25 A. I disagree.

1 Q. Let's look at your deposition at page 211.

2 A. Bear with me.

3 Q. Sure.

4 A. I did better this time.

5 Q. Your deposition at page 211, line 7. "Question: Do  
6 you know whether that use of CIS Claims in fact contributes  
7 to Federal's revenue?

8 "Answer: I have done no quantification research,  
9 nor have I talked with anyone at Federal, Chubb, ACE  
10 Limited."

11 That was your answer at your deposition, correct,  
12 Mr. Whitener?

13 A. Correct.

14 Q. Now, Blaze is not the only decision management software  
15 out there. Alternatives do exist, correct?

16 A. Correct.

17 Q. And your report identifies ten of them, right?

18 A. Approximately, yes.

19 Q. And those alternative decision management software  
20 products could have been used in the computer applications  
21 at Chubb that we've all been discussing in this trial,  
22 right?

23 A. Yes. I'm sorry. Yes.

24 Q. But in forming your opinions in this case, you did not  
25 look at all at those other decision management softwares

1 and analyze how they compare to Blaze, correct?

2 A. Correct.

3 Q. Now, during your questioning with Mr. Hinderaker, you  
4 talked a bit about other insurance companies making use of  
5 rules software, right?

6 A. I'm sorry. Say that again.

7 Q. During your direct examination, you talked a little bit  
8 about other insurance companies using Blaze.

9 A. Yes.

10 Q. And if we could pull up, Vanessa, slide 28 from  
11 Mr. Whitener's PowerPoint.

12 This is one of those slides, right, Mr. Whitener?

13 A. It is.

14 Q. And Mr. Hinderaker showed you this slide during your  
15 direct and he said, you know, this is internal  
16 communications at Chubb, right?

17 A. Yes.

18 Q. He made a point of saying, this was Chubb reporting to  
19 themselves about use of Blaze at other companies, right?

20 A. Yes.

21 Q. And do you see at the bottom of this document, there's  
22 a source listed?

23 A. It is.

24 Q. Who is the source?

25 A. Fair Isaac.



1 Q. And if you go to slide 28, Vanessa, the next slide or  
2 29.

3 There's the continued discussion of how Blaze's  
4 apparently being used in the P&C industry, right?

5 A. Yes.

6 Q. And what's the source on that slide?

7 A. Fair Isaac.

8 Q. And as we discussed earlier, before you rendered your  
9 expert opinions in this case about the value of Blaze to  
10 Chubb, you didn't conduct a study of how all these  
11 insurance companies are using Blaze as compared to having  
12 software engineers code.

13 A. That's correct.

14 Q. And you heard, sitting through this trial, that Chubb  
15 used decision management software in just one percent of  
16 its 1500 computer applications before the merger, right?

17 A. As measured on a number of applications footprint  
18 basis, yes.

19 Q. And they were using software engineers to code the  
20 rules in all the other applications, right? That's the  
21 testimony.

22 A. I believe so.

23 Q. And the decision -- that was a decision that Chubb made  
24 before the merger, even though it had an enterprise-wide  
25 license to use Blaze without any limit on the number of

1 applications, correct?

2 A. That is my understanding.

3 Q. That's a pretty low rate of adoption, right,  
4 Mr. Whitener? One percent? It's pretty low.

5 A. Yes.

6 Q. And then you heard from Mr. Ghislanzoni that at ACE  
7 before the merger, ACE had decided to put Blaze into one  
8 computer application and then this ODM decision management  
9 program in about three applications. You heard him testify  
10 about that, right?

11 A. I heard the testimony.

12 Q. So at ACE, another giant insurance company, they're  
13 only using rules software in less than one percent of their  
14 applications, right?

15 A. Sounds right.

16 Q. And you don't have any basis to disagree with  
17 Mr. Ghislanzoni's testimony that ACE didn't see a benefit  
18 to using rules software more widely, correct?

19 A. No.

20 Q. And then you also heard Mr. Ghislanzoni explain that at  
21 the combined ACE/Chubb entity today, rules software is  
22 still used in only one percent of all of their computer  
23 applications, right?

24 A. Yes.

25 Q. And you have no basis to disagree with that, correct?

RANDOLPH BICKLEY WHITENER REDIRECT

1 A. None.

2 Q. And unlike Mr. Ghislanzoni and Mr. Pandey, as part of  
3 your day-to-day work, you've never spent time analyzing the  
4 efficiencies and functionality of rules software versus  
5 coding by software engineers, correct?

6 A. In terms of the current technology, that is correct.

7 Q. Now at the end of your examination, we all saw this  
8 final summary slide, right, and the final summary slide was  
9 Blaze brought value to Chubb.

10 That's the summary of your opinion, correct?

11 A. I believe I added the word "significant" but yes.

12 Q. Significant value. That's the summary of your opinion,  
13 right?

14 A. Correct.

15 Q. But you do not know whether Blaze actually contributed  
16 to any increase in revenue or profit at Chubb, correct?

17 A. I did -- correct. I did not measure anything.

18 Q. Thank you.

19 I have no further questions.

20 A. Thank you.

21 THE COURT: Mr. Hinderaker, redirect.

22 MR. HINDERAKER: Thank you.

23 REDIRECT EXAMINATION

24 BY MR. HINDERAKER:

25 Q. Mr. Whitener, my purpose is to talk about the analysis

1 that -- the analysis that you did make as opposed to the  
2 analysis that you did not make. So let me focus on the  
3 analysis that you did make.

4 There were at various times in your answers to  
5 the last set of questions where you would say mostly  
6 correct, partially correct, yes, but, correct, but.

7 What was the qualification that you were trying  
8 to express?

9 MS. GODESKY: Objection.

10 THE COURT: Overruled.

11 THE WITNESS: As I mentioned earlier, in my  
12 underwriting thought process, there's a difference between  
13 what something does and how much something does something.  
14 So when you ask me does it make things faster? Yes. I've  
15 been at this for a couple of decades. Okay. Maybe more  
16 than a couple decades.

17 And the pursuit of responding to requests for new  
18 business and improving that response timing and -- has been  
19 a key strategy for 44 years. In fact, I was reading  
20 Property Casualty 360 about three weeks ago, and another  
21 company whose name escapes me, property casualty insurance  
22 company, licensed another software package and in their  
23 reasoning they quoted speed.

24 So that's an important thing. And when I go to  
25 ease of doing business, I can say the same things. These

are, these are value points that the property casualty insurance company pursues and pursues intentionally. How much they get in terms of deployment of an application, they don't measure it. I haven't measured it.

And in all of the documentation I was provided, there was nothing that could speak to any of that.

BY MR. HINDERAKER:

Q. And, for example, well I'll go back to that, but I want to, I guess, stay on this examination for a moment, this line.

And let me bring you to -- you were asked about some stuff on your deposition at page 135. And if you can find page 135, please.

MS. GODESKY: Objection.

THE COURT: Sustained.

BY MR. HINDERAKER:

Q. I'd like to -- Ms. Godesky asked you to look at page 135, line 22, to 136, line 6. And she read -- I'd like to read the rest of the testimony.

MS. GODESKY: Objection.

THE COURT: Sustained. You can ask him the questions.

MR. HINDERAKER: Okay.

BY MR. HINDERAKER:

Q. It's, as you just said, you performed no quantitative

analysis, correct?

A. Correct.

THE COURT: Mr. -- excuse me a second.

Mr. Whitener, you cannot be reading from your deposition right now.

THE WITNESS: I'm sorry. I'm sorry.

BY MR. HINDERAKER:

Q. You -- in your report and in your opinions, those are drawn from, as you started to describe, and in the process of drawing your opinions, you did not have the information available to quantify, measure, the extent of which Blaze Advisor was contributing to the value of selling software -- to the value of selling insurance at the defendants.

MS. GODESKY: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: That is correct.

BY MR. HINDERAKER:

Q. You were forthright about that in your deposition as well.

A. To the best of my ability.

Q. Now, your -- I'll just represent to you, and it's in the book here if you want to check it out. You have a reply report in the defendants' binder. And that reply report is May 31, 2019.

RANDOLPH BICKLEY WHITENER REDIRECT

1 A. Yes.

2 Q. I'll represent to you that -- do you recall doing a  
3 supplemental report in approximately May 2020 that was  
4 limited to your analysis of the rules repository?

5 A. Yes.

6 Q. Okay. And then of course your original report was, was  
7 dated April 19, 2019.

8 So the fact -- counsel asked you whether you  
9 reviewed Mr. Ghislanzoni's deposition before you wrote  
10 these reports.

11 A. That is correct. I was asked that.

12 Q. You were. And given that his deposition was taken  
13 after all -- after these two reports were written, it would  
14 have been impossible for you to do that, correct?

15 A. It would have been an exceedingly large challenge  
16 bordering on the impossible.

17 Q. Yes. Well, you can't go into the future.

18 The deposition of Mr. Schreiber, Ms. Theberge,  
19 Ms. Garnes taken in April of 2020, you would not have had  
20 the opportunity to review those either before your reports  
21 were written in 2019.

22 A. That is also correct.

23 Q. You were asked some questions about hard coding. I  
24 don't need to go over that again, but in your analysis of  
25 the defendants case specific facts with respect to their

1 use of Blaze Advisor, did they report that they were able  
2 to change rules, get products to market faster, because  
3 rather than spending months doing coding, they could modify  
4 the rules and days?

5 MS. GODESKY: Objection. Leading.

6 THE COURT: Sustained.

7 BY MR. HINDERAKER:

8 Q. What did you see in terms of the speed of being able to  
9 modify rules from the defendants' documents?

10 A. There are several places in the defendant documents  
11 where the defendant documents give a case study from an  
12 implementation? DecisionPoint is one. Profitability  
13 Indicator is another. I believe Premium Booking is  
14 another, but that's less of a concrete memory.

15 In those, there are -- pardon me -- there are  
16 statements about the reduction in time to modify rules from  
17 three to four months down to a few days, three to  
18 four days.

19 Q. You were asked a question about Brokersite. Your  
20 understanding that Brokersite used Blaze Advisor is based  
21 on what?

22 A. The documents I referenced in that slide at the bottom  
23 as my sources from the defendant documents.

24 Q. From the defendant documents. Okay.

25 Finally, Mr. Whitener, understanding that you



are, understanding that you are not an IT professional but instead an insurance expert, why are you so confident in your opinion that Blaze Advisor added significant value to the defendants and their selling of insurance?

A. With my underwriting background, the fact that I have been very heavily involved in the execution of the quote, bind, book and issue process, the fact that I have been so heavily involved at the corporate underwriting function, including several instances where I managed the selection of vendors for policy administration systems and billing systems for companies, the fact that I've been heavily involved in the primary setting for technologists and making sure that technologists receive from the business units for which I worked the requirements and documentation that they needed to increase their probability of success, I have seen the value of automating underwriting and compliance and statutory rules through use of technology. I'm very, very confident in that.

Q. Thank you for your time.

A. You are welcome.

THE COURT: Ms. Godesky, any recross?

MS. GODESKY: No further questions. Thank you.

THE COURT: All right. Mr. Whitener, you may step down. Thank you.

(Witness excused.)

N. WILLIAM PAUL WAID DIRECT

1 THE COURT: Mr. Hinderaker, are you ready to call  
2 your next witness.

3 MR. HINDERAKER: I am, Your Honor. William Waid.

4 THE COURT: Mr. Waid, come on up here, please.  
5 If you would raise your right hand.

6 N. WILLIAM PAUL WAID,  
7 called on behalf of the plaintiff, was du ly sworn, was  
8 examined and testified as follows:

9 THE WITNESS: I do.

10 THE COURT: Go ahead and sit down and make sure  
11 you are speaking into a turned-on microphone and state your  
12 full name for the record.

13 THE WITNESS: N. William Paul Waid.

14 DIRECT EXAMINATION

15 BY MR. HINDERAKER:

16 Q. I think I'm getting myself organized. Okay.

17 Good afternoon.

18 A. Good afternoon.

19 Q. Mr. Waid, where do you, where do you reside?

20 A. Spring City, Pennsylvania.

21 Q. And before that, where have you lived?

22 A. I grew up in Oley, Pennsylvania, on a 500-acre dairy  
23 farm. After college, I moved to Boston, Massachusetts, for  
24 12 years, after which I moved back to Pennsylvania because  
25 my parents were getting a little bit older, and I needed to

1 take care of them.

2 Q. Is that for us, for our reference, is that in the  
3 Philadelphia area?

4 A. It's generally outside of Philadelphia. Pretty far  
5 out, about 45 minutes outside.

6 Q. I'd like to understand your entrance into the field of  
7 technology, and perhaps we can start that by letting the  
8 jury understand your educational background and go from  
9 there.

10 A. Okay.

11 Q. So you went to college where?

12 A. Lehigh University for civil engineering.

13 Q. And then how did you get into technology from civil  
14 engineering?

15 A. It was quite by accident. I really couldn't afford to  
16 go to Lehigh, so I had to take overloaded courses, meaning  
17 I took extra course loads. It afforded me the opportunity  
18 as a freshman to take a CAD cam, GKS programming and an  
19 analytics course. It was a junior level course.

20 And the professor took note of this and actually  
21 offered me a job that summer working on a project for the  
22 National Science Foundation.

23 Q. And what was that project?

24 A. The project was actually called the Bridge Fatigue  
25 Investigator. It's actually the early use of artificial

1 intelligence, more specifically a technique called Expert  
2 Systems.

3 And the project was to take the world renowned  
4 leader in bridge fatigue investigation, put what they know  
5 inside a computer so that anybody inspecting a bridge could  
6 take the knowledge of that expert and apply it. And that  
7 was my first introduction to artificial intelligence.

8 Q. Maybe we should have a laymen's understanding of what  
9 artificial intelligence is.

10 A. That's a bit of a buzz word today.

11 It actually started back in the 60s as a research  
12 project. In the late 80s, when I got involved in it, it  
13 was just starting to come into the compute world. Compute  
14 was a little light back then. The principal of artificial  
15 intelligence is really to get the computer to act like a  
16 human, to actually be able to have the computer take the  
17 same knowledge or experience of a human or make the  
18 decisions of a human.

19 Expert System is just one of many techniques that  
20 can be used. It's been around for a long time. And it's  
21 really predicated on sort of what's called an inference  
22 engine.

23 Q. All right. So that's college introduction to AI and  
24 Expert Systems.

25 After college how did you continue on?

1 A. Yeah, so the project sort of give me an opportunity to  
2 see, you know, a lot of value could come from applying just  
3 technology. Here we're actually talking about bridge  
4 fatigue investigation and repairing bridges. It was more  
5 interesting to me than going down the path of building  
6 high-rises or doing my own bridge design.

7 So I pursued through a connection from the same  
8 professor an attorney at Stone & Webster, the division of  
9 Stone -- they actually designed nuclear power plants, but  
10 the division I worked for was called the Advanced Systems  
11 Development Services Group.

12 Q. And how did that, what did that do and how did that  
13 bear on your continuing work and experience into this kind  
14 of technology?

15 A. They were a consulting firm. We actually built  
16 solutions for clients. I worked on fire damage control in  
17 nuclear submarines. We did a simulation of coal switching  
18 at Ontario Hydro, like \$25 billion coal contracts, and they  
19 had to decide what coal to actually run through the plant.

20 We simulated that. We also did Barbie Doll  
21 packaging, for F150 steering knuckle design, Cessna  
22 aircraft leading spar design, all automated design  
23 activities.

24 Q. Using this AI and Expert Systems?

25 A. A variety of techniques beyond Expert Systems, neural

1 nets, genetic log rhythms, more decisioning and reference  
2 engine technology, a variety of technologies.

3 Q. So then you left Stone & Webster, and where did you go  
4 from there?

5 A. I went to a company called Neuron Data in 1996.

6 Q. I think Mr. Marce mentioned, identified Neuron Data.

7 A. Yeah. Jean-Luc was one of a handful of people at  
8 Neuron Data when I joined.

9 Q. And what was your work at Neuron Data?

10 A. I was a systems engineer. Essentially my job was to  
11 work with our clients and map the technology to their very  
12 specific problems, get them to -- and buy the software and  
13 then help them figure out how to use it to drive business  
14 value out of the software.

15 Q. Was there a connection between this work at Neuron Data  
16 and work with the clients that you just described and what  
17 now has become known as Blaze Advisor?

18 A. Yeah. So one of the challenges with the technology in  
19 my experience at Stone & Webster was that it was very  
20 powerful, but it was very expensive and very difficult to  
21 use.

22 And at the time, Neuron Data was, had two  
23 products. It had something called Expert, which was an  
24 expert system tool, that older technology I referred to,  
25 and it also had what was known as a cross-platform Gooley

1 and database tools. Essentially you could build something  
2 in this and deploy it to Unix, a PC, a Mac, any of 28  
3 different environments. This is before Java came in.

4 Java was coming, so Neuron Data needed to  
5 redefine itself. It needed a new product, or it was going  
6 to go out of business. The proposal was made that we could  
7 actually take the baseline of Neuron Data Expert product  
8 and create a new, more powerful business tool. And this  
9 was the genesis of Blaze Advisor.

10 Q. And you, and that idea was -- so there's the idea.  
11 What was done with the idea?

12 A. So we had, we had a starting point and as a system  
13 engineer it was my job to work with clients. So we began  
14 to do what in the software industry we call it sort of beta  
15 testing. We would take early versions of our Blaze Advisor  
16 software to clients. I would work with them, figure out  
17 what their needs were in order to make Blaze more powerful  
18 and more meaningful to them.

19 And that sort of went through a period up until  
20 2000, and then in 2000, we actually launch the first  
21 official go to market version for Blaze Advisor.

22 Q. Okay. Let me kind of catch up with you. In your work  
23 with the clients to see what business needs they had that  
24 perhaps could be solved with the technology Blaze Advisor,  
25 I'd like to know what your interaction then was between

1 your role and, say, Jean-Luc Marce or other people who were  
2 writing code, and I'll call it creating the product.

3 What was that dynamic?

4 A. Yeah. We started sort of the pilot work in 1998. And  
5 so I would collect very specific use cases. I would  
6 actually feed back features of the product directly to  
7 Carlos Serranos Morales who was the lead architect and  
8 developer. Jean-Luc worked for Carlos.

9 And those would then be iterated on and released  
10 as a product, taken back to the client, got additional  
11 feedback on how they used it, what features they thought  
12 they would need going forward, and then that sort of  
13 iterated and cycled.

14 And you continue to improve the product. It's  
15 what we actually in the software industry call product  
16 management.

17 Q. Okay. So I think you said the inception was 1996.

18 A. That's when we started work, yes.

19 Q. And you said your first launch was 2000.

20 A. Yeah, we took our beta in '98.

21 Q. 1998.

22 A. The first commercial launch to widespread sales was in  
23 2000.

24 Q. Let's define for us all, what does beta mean in normal  
25 language?



N. WILLIAM PAUL WAID DIRECT

1 A. Yeah. It's sort of like, think of it like the Wright  
2 Brothers building an airplane. I don't think anybody  
3 wanted to get on the first airplane they built. Maybe they  
4 did, but it is something like that.

5 And then when they perfected it, it got strong  
6 enough, stable enough to actually become, you know,  
7 repeatable in-flight airplane.

8 Q. Okay. And when you get to the, when you get to the  
9 point of being repeatable, that's when you went to market  
10 in 2000.

11 A. Correct.

12 Q. How many years -- maybe I'm going to get ahead of you a  
13 little bit here, but for how many years have you been  
14 involved in working with clients to understand how and  
15 direct the enhancements of or the continued improvements of  
16 Blaze Advisor?

17 A. Since 1998. That really stopped. I have a broader  
18 remit and responsibility, but it is still involved with  
19 Blaze Advisor.

20 Q. So Neuron Data, what happened to that company?

21 A. So they rebranded themselves to Blaze Software.

22 Q. Same company, different name.

23 A. Just changed the name.

24 Q. Okay.

25 A. As I mentioned, their other products became less

1       useful. And so the focus was entirely on Blaze Advisor,  
2       and they named the company Blaze Software.

3       Q. Then what happened to the company Blaze Software?

4       A. Interestingly enough, it was owned by a bunch -- it was  
5       a startup. So it was owned by a bunch of early investors,  
6       and anybody who invests in a company, they want to get  
7       their money out. So these investors have been around for a  
8       long time, and they wanted their money out.

9               So they did something unusual. The first part is  
10       not unusual. They we want into an initial public offering.  
11       Like they put it on the NASDAQ listing. Raised a bunch of  
12       money. Investors got their investment out. Made a lot of  
13       money off the back of it.

14              And then a company in Germany called Brokat  
15       actually bought Blaze Software, and another company,  
16       Gemstone, off the market in a reverse, a reverse cash deal.  
17       They basically took it off the market.

18       Q. Okay. And your personal role in employment, you stayed  
19       with Blaze Advisor through these various companies, did  
20       you?

21       A. I did. I actually changed roles through a couple of  
22       those transitions, but I stayed.

23       Q. And then after Brokat, was there another owner after  
24       that?

25       A. Yeah. So Brokat actually burned through a whole bunch

1 of cash from that acquisition and actually became  
2 insolvent. They pretty much ran out of money in the June  
3 time frame of 2001. And we did find a buyer for the Blaze  
4 Advisor asset in a company called HNC Software, but they  
5 couldn't close before the beginning of August.

6 So we actually went out to all of our Blaze  
7 clients and said we need you to buy the software that you  
8 were talking about buying so we can stay afloat long enough  
9 to close this deal. And they did. We were very up front  
10 and very clear with them of the situation we were in.

11 But to keep their investment in Blaze alive, we  
12 needed the money in order to bridge, and they did. So HNC  
13 Software purchased the assets Blaze Advisor.

14 Q. All right. And then how did Blaze Advisor get to FICO?

15 A. So a year later, literally one year later in August of  
16 2002, FICO purchased HNC Software. Their primary interest  
17 in, at that time, in HNC Software was a product called  
18 Falcon. Falcon is a fraud prediction tool that uses AI  
19 techniques. It also uses Blaze Advisor.

20 And it essentially predicts potential fraud or on  
21 credit cards or debit cards. So every time you swipe your  
22 card, it's back there checking to make sure it was you who  
23 actually charged the card.

24 Q. Okay. So we've come forward to Blaze Advisor and  
25 yourself at FICO in 2002.

1           Would you give us -- describe for us the size of  
2           the Blaze Advisor team. I'm not talking about, I guess I'm  
3           not talking about the coders, but the size of the Blaze  
4           Advisor team in the context of bringing Blaze Advisor to  
5           market from, you know, 2002 forward, 2002 on.

6           A. Yes. HNC had this concept of connecting decisions, and  
7           it was a combination of bringing artificial intelligence,  
8           analytic and predictive modeling and decisioning together  
9           into sort of a unified way of driving business for our  
10          clients. It's essentially what the business FICO and HNC  
11          were in, just at the core, at the core technology level.

12          So when that came across, FICO wasn't really  
13          interested in that. They were more interested in the  
14          larger revenues from the Falcon product. So I actually had  
15          expected to get laid off in the acquisition and not have a  
16          job, but they decided to keep me, and they asked me to run  
17          a go-to-market function, which is essentially taking those  
18          products into the market.

19          So in 2002 I had -- it was three people and me.  
20          That was the scope of our go-to-market effort.

21          Q. And did that go-to-market effort include the product  
22          Blaze Advisor?

23          A. Yeah, Blaze Advisor was the hallmark product at that  
24          time. There actually wasn't really very many others in the  
25          works in engineering. They were building them, but they

1 weren't ready for go-to-market.

2 Q. In these early years were additional -- in addition to  
3 the in-house, I'll call it in-house enhancements and  
4 capabilities and improvements, feeding back from the client  
5 feedback, in these early FICO years, were other investments  
6 made into the capabilities of Blaze Advisor?

7 A. Yeah, a tremendous amount of them, actually.

8 Q. Can you tell us what they were?

9 A. It's a long list.

10 So we introduced what we call RMA, our rule  
11 maintenance application. We've actually purchased another  
12 company called Rules Power. That was a company by  
13 Dr. Charles Forgy, who was the inventor of RETE, and he had  
14 a patent for something called RETE 3. He owned that. It  
15 was faster than RETE 2 and RETE 1, but it also included  
16 conflict detection. Checked for things like circular  
17 logic, rules never reached, nested rules that actually  
18 conflict with one another.

19 It was a way to sort of check the validity of the  
20 rules. And our business is entirely focussed on enabling  
21 businesses to make better decisions, and business users  
22 today, they're all business users of the product. So we  
23 needed these capabilities to make sure that when  
24 businesses -- business people are authoring rules that  
25 they're not doing something they shouldn't be doing and

1 sort of detecting them.

2 We added something called a cross reference  
3 browser that sort of let you visualize. We added something  
4 called the impact analysis tool. This allowed you to sort  
5 of say, if I change a piece of data or change a rule, what  
6 am I affecting, like what other rules or data am I  
7 affecting?

8 We built a nice visual testing capability. I  
9 could keep going on. There's a significant number of  
10 investments.

11 Q. You mentioned, I think you mentioned RETE 3 --

12 A. Yes.

13 Q. -- of Dr. Forgy. Did FICO purchase that patent?

14 A. Yes, that is ours.

15 Q. And you also mentioned there's a RETE 1 and a RETE 2.  
16 My question is, is that technology RETE 1 and RETE 2, in  
17 the public domain?

18 A. It is in the public domain. In fact, all rules engines  
19 that were in question in this trial, Drools, ODM which was  
20 formerly J-Rules, from I Log, they are all RETE based.

21 Q. But not RETE 3 based?

22 A. No they're RETE 2.

23 Q. Did your role change at FICO around the 2007 time  
24 frame?

25 A. Yes. FICO was organized around products, and we want

1 to market as products, but we were a pretty sizeable  
2 company by then. And so the go-to-market model shifted to  
3 covering accounts. And our CE or at the time was  
4 ex-Accenture, so he aligned our go-to-market model around  
5 industries and industry sectors.

6 I was actually put in charge on a global basis  
7 for what we call our merging markets, government, help co,  
8 manufacturing, high tech, our core industries were around  
9 insurance and financial services. So basically I had  
10 everything outside of that.

11 Q. Okay. Why were the core industries financial services  
12 and insurance?

13 A. Well, there's a couple of reasons why. Most of our,  
14 most of our clients are in the business of risk assessment  
15 and risk decision management. So, and there's a lot that  
16 goes into that statement. I won't get into the specifics  
17 on that.

18 But essentially in banks and insurance, that is  
19 the business. That's how you make money, is the ability to  
20 actually assess that risk and price and actually sell or  
21 sign the right product, sell that product out to a consumer  
22 base.

23 There's a lot of decisions that get made in and  
24 around that that range across a broad set of things, but  
25 the use of analytics, the use of today machine learning and

1 AI and decisioning is quite predominant in those  
2 businesses.

3 Q. So that was the core focus of Blaze Advisor then. Is  
4 it still the core focus of Blaze Advisor with respect to  
5 the industries that are most interested in it?

6 A. From a revenue perspective and a penetration  
7 perspective, yes, both. Yes.

8 Q. You mentioned that in 2002 you had about three people  
9 going to the market with Blaze Advisor. In 2007 how had  
10 that changed?

11 A. I had 93 people globally.

12 Q. And then after, after that responsibility for emerging  
13 markets, global and emerging markets, did your  
14 responsibilities change after that?

15 A. They did. I actually took responsibility for a region.  
16 The region was the Americas, Canada, US, South America,  
17 Central America and the Caribbean.

18 Q. And then after that within FICO, of course.

19 A. After that I actually became a general manager for the  
20 FICO Platform. At the time it was called the decision  
21 management platform, but it's the FICO Platform.

22 Q. And today there's, the title is called the FICO  
23 Platform. First, what is it, and second question will be,  
24 how does it relate to Blaze Advisor.

25 A. So the FICO Platform is actually, we actually started



1 in earnest development in 2013, but it was that early  
2 vision that was at HNC. It was the ability to bring  
3 decisioning, which is the core thing that our clients do  
4 from a business value perspective and a business return  
5 perspective into a common integrated technology platform  
6 that made it very easy for you to get data in, apply  
7 analytic principles like profiling to that data, apply  
8 analytic models and machine learning models and to that  
9 data and take decisions, including, you know, feedback and  
10 learning mechanisms and enabling the business to control  
11 all of that. That's the FICO platform.

12 Q. And how does it relate to Blaze Advisor?

13 A. Blaze Advisor in that it is the core decisioning  
14 engine. It actually is interchangeable. You can go from  
15 FICO platform to Blaze. You can go from Blaze to FICO  
16 platform.

17 Q. And now you are, your title today is what?

18 A. I am the chief product and technology officer at FICO.

19 Q. And what does that mean?

20 A. That means I am responsible for all products and all  
21 technology from a building of those products, including the  
22 go-to-market, the pricing, the packaging, profitability and  
23 our strategic direction of where we go.

24 Q. And with respect to, with respect to your technology  
25 responsibilities, we've learned in the lawsuit that there

are job descriptions called architects, and there are job descriptions called software engineers.

In terms of the categories of responsibilities that report to you, how does that lay out in the technology space?

A. I have responsibility for architects, software engineers, quality assurance engineers, developmental operations or dev ops engineering, documentation, user experience, product management, program management and project management and operations.

Q. And are you knowledgeable about software architecture?

A. I am.

Q. And that you can code as well.

A. I've coded a fair bit, yes.

Q. How many people today are on your team?

A. Just about a thousand.

Q. I want to change topics a bit. We heard testimony, and you were here in the courtroom, of course, and if you heard it differently than I do, make sure you say so, but heard testimony that business rules management systems software is used less than one percent of all applications at Chubb Limited.

From your experience, including your experience with Chubb & Son, is that an accurate way of assessing the significance of one technology?

1 A. It depends on what your measurements are. If you're  
2 talking from a pure technology perspective, yeah. I have  
3 over a hundred million lines of code that I manage. I can  
4 give you amazing numbers of the number of technology  
5 components that are in that code.

6 When you blow it down to the actual business  
7 practices, they all aggregate up into a few set of things  
8 that actually occur at both banks and insurance. That does  
9 not mean that there are not a lot of supporting subsystems  
10 in those organizations. There is tremendous number of  
11 them.

12 There's a lot of data management that goes on.  
13 There's a lot of data exchange utilities that go on.  
14 There's a lot of protocols that's actually communicated  
15 across all the channels of communicating with your clients  
16 or each other.

17 If you measure it there, absolutely you are going  
18 to have 1500 or 3,000 or whatever the number is being  
19 thrown out. But when you actually talk to a business  
20 person about what their core systems are, the ones they  
21 think about, it is a much smaller number.

22 Q. So is it fair to say that the more pertinent question  
23 is, what are the core technologies?

24 A. It depends on what you start from. If you start from  
25 core technologies, well, I use GDK, Log4j. I can go

1 through a whole list of components that are used. They are  
2 not the core components.

3 Q. Okay.

4 A. The core components center in and around things like  
5 your contact management, right? They center in and around  
6 the way you perform your risk assessment, the way you do  
7 your pricing, the way you actually manage your product  
8 definitions or your product validation or new introduction.

9 These are the sort of core systems that the  
10 business thinks in terms of.

11 Q. There was some testimony, another shifting topic, there  
12 was some testimony about using the word "latency" or -- do  
13 you recall that?

14 A. I do.

15 Q. First, latency, what is latency.

16 A. Yeah. There's, there's a bunch of terms that actually  
17 sort of come together around latency. Performance is  
18 actually related to it, but latency is, it's very simply if  
19 any of you used old analog phones, sometimes there's a lag  
20 if you are calling across very long distances, right? You  
21 talk, and then you got to wait before that actually gets  
22 there or gets back.

23 In the computer software world, it essentially,  
24 it's a measure of the time it takes to respond. There's  
25 many factors that come into latency, though. Performance

1 is one of the factors that comes into latency.

2 Q. Is latency a consequence of connecting -- you used the  
3 phone analogy. Is latency the consequence of connecting  
4 different computers together and they have to communicate  
5 across time or space?

6 A. There's more than three, but I'll give you three sort  
7 of levels of where latency comes in.

8 Today modern Cloud computing has a lot of compute  
9 distributed. So you could process in Ohio, and you can  
10 process in Raleigh, North Carolina, and you have to go  
11 across the internet. Even if it's a direct connect or a  
12 secure channel, you still got to go across IT, CPIP or the  
13 internet to get to it.

14 Sometimes those communications take a little bit  
15 longer. Another form of latency that gets introduced is,  
16 maybe you are not communicating across, but you actually  
17 communicate in your own data center. Or you might have  
18 different machines that are connected, but they're  
19 connected through direct wires, so it's much faster.

20 Or it could even be in the same machine, frankly,  
21 and you're still communicating between components of the  
22 software. And there's varying degrees from there, all the  
23 way down to the final one which is in line. In line  
24 essentially means that you actually execute your rules or  
25 your code or anything else that you are programming

1 directly in the same unit.

2 And when you when you talked about any kind of  
3 coding or programming, it's all in line, unless you're  
4 architecture is designed to separate that.

5 Q. Okay. Does the concept of latency have anything to do  
6 with the use of Blaze Advisor?

7 A. It has more to do with the architecture. Your  
8 architecture of your design is a bigger issue here. In  
9 today's modern compute world, though, we have a ton of  
10 customers processing huge volumes on the Cloud, and we  
11 don't have latency problems.

12 If you are in your own data center, you shouldn't  
13 have latency problems. Performance does play into that,  
14 though.

15 Q. Meaning?

16 A. Well, the time to communicate is also the time to  
17 process. So if you have performance problems with your  
18 software and it takes a long time for it to execute, you  
19 will have the appearance of a latency. Where that actual  
20 delay is coming from, dependent on your architecture,  
21 depends on your coding practices. In the business world  
22 space, business rules space, it gets a little confusing  
23 because there's two forms of performance.

24 There's the performance of the rules. Did I have  
25 good business outcome? And then there's the performance of

1 executing them.

2 Q. Understood. I'm changing topics again.

3 I'd like you to find in your book the  
4 Exhibit 956.

5 A. I have that.

6 Q. Okay. And you see that -- if we could publish the  
7 first page. I think there's no objection to it.

8 956 is the 2014 Chubb Corporation annual report.  
9 Great.

10 You may recall Mr. Pandey saying that he had  
11 never heard of Chubb & Son, a division of Federal, before  
12 this lawsuit?

13 A. I do.

14 Q. Would you turn to page 12 of this annual report,  
15 please.

16 A. I am there.

17 Q. Okay. And you see that begins a listing of the  
18 officers of Chubb & Son, a division of Federal?

19 A. I do.

20 Q. Okay. And would you turn to page 13?

21 A. I am there.

22 Q. All right. And under "officers," what's the first name  
23 of officer of Chubb & Son?

24 A. Ramesh Pandey.

25 Q. And then if we go down that page a bit, we see a

listing of the officers of Federal Insurance Company.

A. Yes.

Q. Thank you.

Let me change topics again. I'd like to understand -- I'd like to understand the business model in the software industry. I'd like to -- in a way I'm going back to 1996, 2002, but I'd like to understand the model, the business model in the software industry. But let's, let's make it specific to Blaze Advisor and the lawsuit.

So when Blaze Advisor was first introduced into the market and sold to the early customers, was there any profit made?

A. No profit.

Q. All right. Is that a common element, common aspect of the software business model?

A. It is very common.

Q. Can you explain that for us, please?

A. Yeah, and you will see this in start-up companies. They're looking for investment money. It's capital. There's a number of reasons for it.

First of all, it takes time for you to build the core software and get it to a state where it begins to bring business value.

Once you get to that state, then you actually have to take it to market and sell it, and you have to



1 establish customers with some kind of reoccurring or  
2 regular revenue stream so that you can offset those  
3 expenses. And the period of time that it takes, that  
4 depends on the software.

5 But it's not uncommon for it to take many years  
6 before a software product actually begins to make money.  
7 The good part about it is is once it does, it starts making  
8 lots of money.

9 Q. In the early years of Blaze Advisor -- well let me ask  
10 you this: How many years did Blaze Advisor lose money  
11 before it turned?

12 A. Well, we, if you count when we actually went to market  
13 full, it's around nine years.

14 Q. Before it turned?

15 A. Before it turned a profit, yeah.

16 Q. So 2000 launch. Nine years brings us to 2009.

17 A. Yeah, around there. Maybe the end of 2008.

18 Q. Okay. Changing topics again.

19 We've heard a lot of language, use of words in  
20 the trial. We've heard the words "rules." We've heard the  
21 words "business rules." Is there a distinction between  
22 those?

23 A. There is. The concept of a rule is actually a  
24 programming construct. It's where it came out of. Most  
25 people think of it as an if then else rule. A business

1 rule by its very nature and by its label refers to rules  
2 that the business actually control or own.

3 So they're the ones that come up with it.  
4 They're the ones that have to actually get it into some  
5 kind of operating function. They're the ones that have to  
6 ensure that it's separating the way they intend it to be.  
7 They're the ones who have to make sure it's a compliant  
8 rule.

9 And so there's this connectivity between the  
10 business having a care and ownership of that versus not.  
11 I'll give you an example.

12 You actually want to convert a date of birth to  
13 an age. That actually constitutes a rule, not something a  
14 business person is generally interested in.

15 Q. Then now let's talk about what a business rule is in  
16 contrast to that.

17 A. They can be quite varied. But by their pure  
18 definition, they are rules that the business actually cares  
19 to use to operate their business. Very frequently those  
20 rules change. They change from pressures from a variety of  
21 reasons.

22 One is compliance. Another one would be new  
23 product introduction. Some of it might be competitive  
24 pressure that they have to adjust against. There's a lot  
25 of reasons why, but in the core systems of banks and

1 insurance, those core rules actually become the  
2 representation of how they do business.

3 Q. So if we were going to try to understand the  
4 significance within a company, I take it that we should be  
5 asking about the business rules as opposed to their rules.

6 A. Yes.

7 Q. Let me change topics again. Well, let me -- yeah, let  
8 me do this first.

9 If we could get J1, please, the license  
10 agreement. There we go. Thank you.

11 So we have on the screen, and you have the book  
12 there, Mr. Waid, J1, the software license and maintenance  
13 agreement between Chubb & Son, a division, and FICO, right?

14 I'd like to know, at this stage what was your  
15 personal role with respect to, with respect to this license  
16 agreement?

17 A. So 2006, this would have been when the team was growing  
18 to become international. So I had international remit for  
19 Blaze and other related tools products.

20 So I would have actually been involved in any  
21 sort of core decisions made around pricing or material  
22 changes in our contract terms or things of that nature.  
23 They would have had to come to me for approval.

24 Q. So your involvement at the management level?

25 A. Yes.

1 Q. And in fact were you the person who gave final approval  
2 for the pricing of this license agreement?

3 A. I don't recall that, but it would have been me, yes.

4 Q. Okay. And would it have been you that approved the  
5 pricing for each of the amendments, Amendment one and  
6 Amendment two?

7 A. It would have required my approval, yes.

8 Q. In 2006, and going back to the discussion we just had  
9 about the -- we can take this down now for a little bit.

10 Going back to the discussion that we had about  
11 the business model and the software industry and the  
12 investment before turning profit, in 2006, that time frame,  
13 what were FICO's discounting practices regarding Blaze  
14 Advisor?

15 A. I would use the word "aggressive."

16 Q. Okay. Can you build on that for us?

17 A. Look. 2002 we just get this thing off the ground.  
18 2003, there's three of us kicking around into 2004. We're  
19 look to go secure enough business to get references in the  
20 industry.

21 Once you get those references and clients see  
22 what you are able to accomplish with other clients, that  
23 builds on itself, and you start to build a base of more  
24 sales, both with the same clients or with new clients.

25 So it's not uncommon early in software to be

1 quite aggressive by discounting very low sometimes in order  
2 to secure those reference accounts and secure that initial  
3 business.

4 Q. For the prospect of future business?

5 A. Always for the prospect of future business, yes.

6 Q. And when we look at the license agreement, we see that  
7 Amendment Two was signed at the end of December of 2006.

8 A. Yes.

9 Q. Did that, does that timing bear on FICO motivations  
10 with this product for discounting?

11 A. At this time it did.

12 Q. Why?

13 A. It was -- it was our general practice to incent  
14 customers to move to larger deals as quickly as possible.  
15 It was our common practice at the time, if they bought an  
16 initial license, to communicate to them in some form,  
17 either written or go back and try to convince them, hey, if  
18 you upgrade your license or if you buy more, I will credit  
19 back what you've already bought 100 percent, just so you  
20 buy more.

21 Those practices were quite common at that time  
22 frame, yes.

23 Q. Okay. Can you contrast that to 2016?

24 A. Very different.

25 Q. And how and why?

1 A. Our pricing model -- well, pricing model always been  
2 our pricing model, but our pricing practices around  
3 discount around the 2010-11, time frame, we started  
4 becoming more stringent in how and where we actually  
5 offered discounts. That's reflected in the business.

6 We also changed other practices too. Like we  
7 began moving away from perpetual licenses. The market was  
8 moving away. We were moving away. We were moving towards  
9 term licenses, which establish a reoccurring revenue base  
10 for the product.

11 Q. You mentioned standard pricing guidelines did not  
12 change from that time frame.

13 A. The pricing and how we priced did not change, no. It's  
14 the same pricing model that we had all the way back in  
15 2003.

16 Q. But discounting has changed?

17 A. Yes.

18 Q. And in terms of market acceptance to FICO's pricing  
19 without the aggressive discounting, can you describe that?

20 A. Yeah. We began in the 2000 -- I said 2010, 2011 time  
21 frame of sort of pulling back on the level of discounts and  
22 by 2015 into '16, you know, relatively strong flat sales.  
23 Going into '17 we had even more sales, 20 percent by my  
24 last look of that.

25 So it was, it was a strong business at that point

1 in time.

2 Q. Without aggressive discount?

3 A. Without aggressive discounting, yes.

4 Q. If we could go back to the license agreement, please.

5 You see at the top of the, at the top of the  
6 license agreement in the first paragraph, if we could open  
7 that up.

8 A. Yes.

9 Q. The software license and maintenance agreement is  
10 entered into as of June 30, 2006, between Fair Isaac  
11 Corporation and Chubb & Son, a division of Federal, client.

12 From your role on the business of FICO, but  
13 specifically in the licensing of Blaze Advisor, what's the  
14 significance, what's the business significance of defining  
15 who the client is?

16 A. It defines who you are doing business with. It defines  
17 who you are licensing the software to.

18 Q. Okay. And does it also -- well, a license agreement  
19 is, of course, a two-way agreement, licensor/licensee.

20 A. Yes.

21 Q. And FICO as the licensor is bound by the terms of the  
22 agreement.

23 A. Yes.

24 Q. And then on the licensee side, it's the client that's  
25 bound by the terms of the agreement.

1 A. Yes, the client is bound to all of the terms of the  
2 agreement.

3 Q. And the -- we've seen already that in the definition  
4 of -- in Amendment One and Amendment Two, the definition of  
5 "client" did not change.

6 Were you part of any discussions during that time  
7 frame of Chubb & Son wanting to sign -- of any discussion  
8 about the client being anybody else but Chubb & Son?

9 A. No.

10 Q. Going back to the basic, to the base agreement, we look  
11 at the license grant in paragraph 2.1. And there we see,  
12 just as you said, the licenses is a, "hereby grants to  
13 client."

14 But I'm also interested in asking your, the  
15 business reasons for the fact that the license agreement  
16 says it's non-transferrable, nonexclusive and a limited  
17 license.

18 A. Yeah, so first of all, software licenses are a  
19 construct whereby ownership stays with FICO. It's our IPR  
20 software. The license just gives them a right to use, and  
21 there's specific conditions under that right to use.

22 This begins to outline the fact that this  
23 agreement is with the client, and they cannot transfer this  
24 agreement to anybody else, and it is nonexclusive, meaning  
25 it is not just for them, and that there are limits framed



1 within this agreement that they must adhere to.

2 Q. And what's the business thinking behind the phrase "for  
3 internal business purposes only"?

4 A. Yeah. So this is an additional protection that we want  
5 to make sure that the use of the license, the right to use  
6 the license, is for the individual that we're licensing to,  
7 in this case the client, and that it is for their internal  
8 business purposes, and they can't extend or reach that use  
9 of the license outside of the use just for that client.

10 Q. Let's turn to 3.1. This is called License  
11 Restrictions. There's a number of them, but overall,  
12 what's the commercial business reason for FICO to put  
13 restrictions into the license?

14 A. They're all there to make sure that the software is  
15 used in accordance with very specific constraints or  
16 limitations that we place on that license grant. There's  
17 various reasons for them from a business perspective, but  
18 all of it is to protect a very valuable piece of IP.

19 Q. Being Blaze Advisor?

20 A. In this case Blaze Advisor.

21 Q. If we go into 3.1, we see the small Roman iv. So it.

22 Begins, "Client represents and warrants that it and its  
23 employees shall not," and then Roman, small Roman iv,

24 "disclose the Fair Isaac products to or permit use or

25 access of the Fair Isaac products by any third party or any

1 individuals other than the employees of client."

2 So let me stop at that point with "any third  
3 party."

4 Why does FICO care that the Blaze Advisor  
5 software cannot be disclosed used or accessed by any third  
6 party?

7 A. There's a number of reasons, two primary business  
8 reasons. We like to know who is using our software at all  
9 times. That third party could be a competitor or that  
10 third party could be leaking confidential information about  
11 the use of our software to a competitor. It has happened  
12 in the past, so we want very tight controls on who actually  
13 gets access to that software.

14 Another business reason is also, there is a bit  
15 of an integrity issue in the business here. Third parties  
16 purport themselves to be Blaze experts all the time, and we  
17 do not want third parties getting access to Blaze software  
18 unless we've at least had a conversation with the client  
19 about that third party and any representations that they've  
20 made.

21 Q. Well then let's go to, we'll come back to 3.1, but then  
22 let's go to 3.6. And here we have a provision, Use By  
23 Third party.

24 Is this an instance of what you just described  
25 where the client wishes to have a third party, here ACS

1 Commercial Solutions, have access and use of Blaze Advisor  
2 on behalf of the client?

3 A. Yes. It looks like a negotiated term whereby  
4 third-party use was granted in a very specific case of ACS.  
5 That conversation must have occurred. And furthermore,  
6 I'll point out here that this section holds ACS to the  
7 obligations of the license grant and also the client to  
8 ACS's responsibility to the license grant, which is what I  
9 didn't mention yet another thing we're concerned about.

10 If the third party is going to use it, we want to  
11 make sure that they're aware and they're beholding to the  
12 contract terms of the license grant.

13 Q. And you also bound the client to be responsible should  
14 ACS not abide by it.

15 A. Absolutely, because it's arm's reach for us, so yes.

16 Q. And then the last sentence is clear saying what?

17 A. This is basically saying you have a, you have a right  
18 to use it with ACS but nobody else unless you actually come  
19 back and ask for our consent.

20 Q. You mentioned just by looking at it that this was a  
21 negotiated term. How did you, how were you able to tell  
22 that?

23 A. Well, it's easy because we don't allow ACS to use our  
24 software in every one of our contracts.

25 Q. All right. Okay. Dumb question.

1 Let's go back to 3.1(iv,) small Roman four,  
2 "Client represents and warrants that it and its employees  
3 shall not," and we read about the disclosed. And then it  
4 goes on, "permit use or access by any third party or by any  
5 individual other than the employees of client."

6 From the business point of view, why is that  
7 further restriction limiting, further restriction saying  
8 only employees of the client?

9 A. Well, it's very similar to the third party. Our  
10 agreement is with the client, and they are responsible for  
11 making sure that the terms are agreed to and that flows  
12 down through the employees of the client. If they end up  
13 giving it to somebody who is not an employee, where is the  
14 terms and conditions being enforced?

15 Q. Your further understanding of the license agreement,  
16 I'd like to go to what's called Exhibit A.

17 A. Exhibit A.

18 Q. Exhibit A of the base document. It's J001-011 on the,  
19 our copy.

20 A. Exhibit A of the contract.

21 Q. Yes. Yes.

22 A. I am there.

23 Q. And this Exhibit A is called Pricing and Payment.

24 And I want to ask you to explain for us some of  
25 the things that are on here, including and starting with

Blaze Advisor Development. And what is that as a product?

A. Yeah. So Blaze Advisor is actually broken down into multiple licensing components. The two primary components of the licensing are around what we call our development and our deployment licenses.

A development license is in the Blaze world are licenses that are granted and limited to the purposes of writing rules, connecting your Blaze Advisor application to your systems and data and actually generating the deployment that gets eventually put into the servers of the client.

It's predominantly a technical tool, but the technical tool also generates what we call rule maintenance application, which is where business users can use that. So it's the, it's the primary licensing component for that, that development, authoring, connectivity and integration work.

Q. And at the outset at the original agreement in June for use up to five seats, and then it goes on, "to be used solely in connection with the named application." We'll get to that named application component in a bit, but what does it mean for up to five seats?

A. Yeah. The, the development license is actually associated with a portion of the software that actually installs on a personal computer or a workstation.

1 Developers or programmers that use Blaze Advisor would have  
2 that installed on their development machine where they do  
3 their programming and where they do their work. And this  
4 is saying, you know, five of them.

5 Q. Okay. And I'm going to skip over platform for a moment  
6 because it's both in development and deployment. Let's  
7 distinguish development so that we can under what  
8 deployment is.

9 A. Yeah, so the deployment license is actually referring  
10 to, when you have authored your rules and tested them that  
11 they are what you want them to be, you have to take those.

12 Rules and push them out into a server or some  
13 processing unit somewhere. And there's actually various  
14 ways you can do that, technical ways you can do that, not  
15 really relevant here, but the license to do that is that  
16 run time piece that allows it to eventually go to  
17 production and execute or operate, run those rules.

18 Q. Okay. And then in terms of the scope and quantity,  
19 scope and quantity for development was five seats. Scope  
20 and quantity for deployment is named application.

21 A. Correct.

22 Q. And that, of course, is defined below as the CSI  
23 Express.

24 Now going back to product, there's the reference  
25 here platform, Java and .NET. Would you explain what those

are?

A. Yeah, they're essentially programming languages. They're technology that programmers would use. If you remember, I said you could deploy. You could actually pull in the data that the client has, and you can deploy to the servers. If that data is or that server is in the .NET platform or technology, you would need that particular license. If it was based on the Java technology, you would need that license.

So -- and they are separate licenses, and in this case this order form has both.

Q. Okay. And in terms of the standard pricing of, you're using a FICO pricing methodology that you've been using over the years, decades now, does the number of platforms that are licensed impact the price?

A. It does.

Q. We will catch up with that issue later on, but just to make that note.

Then the limitation --

We'll go down, if you will, Mr. Mayleben, Definition of Named Application.

And I think we've seen the definition before, but in terms of the permission granted to use Blaze Advisor, what is the limitation of scope in this agreement?

A. It's described as the CSI Express application,

1       parenthetically, which is Chubb's specialty insurance  
2       underwriting and automated policy renewal application. And  
3       it's supporting systems applications excluding claims.

4       Q. And in a general nomenclature, is this called a named  
5       application license?

6       A. It is what we call a named application license, yes.

7       Q. Well, let's go to Amendment Two -- or I'm sorry --  
8       Amendment One.

9       A. I'm there.

10      Q. Okay. Our product. We have the Blaze Advisor  
11      development product, Blaze Advisor deployment product. The  
12      platform is still both, Java and .NET. And the scope  
13      quantity is now, let's do development first. For use on up  
14      to ten seats to be used solely by the Chubb specialty lines  
15      division.

16               And then for development, that product, scope  
17      quantity, for use solely by the Chubb specialty lines  
18      division. No other limitations, i.e. seat, or named  
19      application limits apply.

20               So from your business perspective point of view,  
21      can you interpret that in -- just tell us what that means.

22      A. I think you meant deployment.

23      Q. I -- yes, I did.

24      A. Yeah. The fencing around our licensing in this  
25      particular case is a very specific business function. So



1 call it specialty, specialty lines or the division of  
2 specialty lines. What it's saying is that in that division  
3 and in that scope of that business type, they can use Blaze  
4 Advisor for any number of applications that they wish to  
5 without measure CPUs or others or limitations.

6 Q. If it's for that division.

7 A. For that division, yes.

8 Q. Now when you say "they," is that the client?

9 A. Absolutely.

10 Q. And in your terminology this is called a divisional  
11 license?

12 A. Divisional license, yes.

13 Q. And now let's turn to Amendment Two.

14 THE COURT: Mr. Hinderaker, are you at a  
15 convenient breaking point?

16 MR. HINDERAKER: I surely am.

17 THE COURT: Okay. Members of the jury, we'll  
18 take our afternoon or at least one of our afternoons  
19 breaks, but I think we'll try and shorten it up if you can  
20 be back in at ten minutes after 3:00. All rise for the  
21 jury.

22 (Recess taken)

23 THE COURT: Be seated.

24 BY MR. HINDERAKER:

25 Q. So at the break we were just going to start talking

1 about Amendment Two.

2 Perhaps we can pull that up.

3 We mentioned already that it was signed at the  
4 end of December 2006.

5 Now let's go to the table on the front of it.  
6 And we see that the development product and the deployment  
7 product is there, and the two platforms are still there.

8 But now let's talk about the column Scope and  
9 Quantity, and here it is called enterprise-wide. So my  
10 first question to you is, Understanding this license  
11 agreement, who is enterprise?

12 A. The client.

13 Q. Chubb & Son?

14 A. Chubb & Son.

15 Q. And distinguish between the scope of a divisional  
16 license that was Amendment One and the scope of an  
17 enterprise license for the client Chubb & Son.

18 A. So Chubb & Son could have, and actually does have,  
19 multiple divisions. There's a specialty line, commercial  
20 line, personal line. There's finance. There's a whole  
21 bunch of other sort of scopes within Chubb & Son.

22 It is possible to actually license Blaze Advisor  
23 within an organization on a smaller segment of it.  
24 Ironically we call both of them enterprise license  
25 agreements. It's just what's the scope.

1 Q. And scope defined by the client?

2 A. The scope defined by the license grant in this case,  
3 which is tied to the client.

4 Q. Understood. All right. And I think you mentioned, you  
5 mentioned different kinds of insurance products. I can't  
6 remember exactly the word you said, but were you speaking  
7 of the different business units and different kinds of  
8 insurance products?

9 A. Yes. And you can construct them in various ways to  
10 whatever the scope of the client in license agreements like  
11 this, as you saw with specialty lines, a division.

12 Q. Right. And in terms of the development seats, now  
13 being -- now there's no limitation on development seats.

14 A. There's no count.

15 Q. No count.

16 A. Yeah. No count.

17 Q. What's the difference between no limitation and no  
18 count?

19 A. When there are limitations in the agreement, they all  
20 have to be upheld as part of the license grant. This  
21 section refers to what we call scope, which is sort of --  
22 if you are talking about a box, you know, a little box, a  
23 big box or like whole room. So it's --

24 Scope is a function of many different dimensions.  
25 It could be defined as in this case for the entire,

entirety of the client Chubb & Son. It can be restricted as it was previously to a division. You could add other restrictions to it. They are all negotiated.

Q. All right. Is there anything in your understanding of Amendment Two that changes the license restriction that we looked at earlier in paragraph 3.1 being that it is only the employees of the client Chubb & Son who can use Blaze Advisor?

A. No.

Q. Stayed the same.

A. Stayed the same.

Q. Now, you mentioned that early at the beginning of your testimony that you were the person responsible for the price set for this license agreement. And we can look at the first page of Amendment Two and see pricing.

There was testimony earlier, and in particular with Mr. Wachs, where he was using the phrase that the fee was, was a net fee or the fee was one with credit given.

Do you recall that?

A. I do.

Q. And so, if you would, tell us what that means and how it works.

A. Yeah. So I mentioned earlier that we were providing incentives for clients to buy more. So we had a practice that if the client bought more within a 12-month period, we

1 would credit back whatever they previously paid.

2 Net fees are the fees that are due after that  
3 credit is applied. And in this particular agreement, it  
4 identified the net fees as 950,000, which is the  
5 incremental fee on top of the 350 that was already paid.  
6 That gets you to 1.3 million.

7 Q. Okay. So in this instance, if we went through the  
8 three stages, the first named application was, we saw  
9 173,750. The divisional, if you go to that was 350,000.  
10 But the net number to the client was 350,000 minus the  
11 original fee, correct?

12 A. Yes.

13 Q. And then if we go to the Amendment Two, where it says  
14 1,300,000, the net number to the client is that 950,000,  
15 because you've given credit for the earlier 350,000.

16 A. Yeah. And the reason for the distinction is, they've  
17 already paid us that 350,000.

18 Q. Yes. So over the original plus one, plus two, that  
19 turns out to be the full amount.

20 A. Correct.

21 Q. We further phrased, and I've used it plenty of times,  
22 of value based pricing. And as applied at FICO in its  
23 license agreements, I'd like you to describe what that  
24 means.

25 A. Yeah. So we attempt to actually price Blaze Advisor

1 against the value that it offers. There are several  
2 metrics that we use for doing that. When we get to the  
3 scenario here, which is an enterprise-wide, there's other  
4 factors that come into play, but the primary metric we use  
5 is revenues.

6 Q. Revenues of -- what's your first data point for  
7 revenues then?

8 A. It's the revenues of the entire entity that we're  
9 actually contracting with.

10 Q. Of which the client is a part?

11 A. Of which the client is a part, yes.

12 Q. Okay. Because we've heard testimony of the revenue,  
13 and Mr. Wachs testified in his video of the Chubb  
14 Corporation having \$12.3 billion in annual revenue.

15 So if you would describe for us how that data  
16 point of the whole organization then factors into the  
17 pricing analysis that you apply, like in the first  
18 instance, to a named application license, then to a  
19 divisional and then to the enterprise of Chubb & Son.

20 A. Well, the application license is actually based on a  
21 variety of factors. There's nine of them. When we get to  
22 the divisional license here at the 350, the way that it  
23 would have been priced was to take the entire entity, all  
24 12.3 billion of it.

25 And if my memory is correct, I think in the RFI

1 they said that their revenues was 3.5 billion for  
2 specialty.

3 Q. Specialty lines.

4 A. Specialty lines. So essentially you don't take a  
5 proportion of that and say, let's say the pricing for the  
6 \$12.3 billion organization came out to X, and the specialty  
7 lines is [REDACTED] of X. We don't charge [REDACTED] of  
8 the X. What we do is, we try to incent the client to move  
9 to a larger purchase, just like we do with the credits. So  
10 we'll take the difference between that, which in this case  
11 is the three and a half billion to the 12.3.

12 And it's more of an art than it is a science. We  
13 pick anywhere [REDACTED] of the way  
14 between, and we say that's the right price point for this  
15 division.

16 Q. And, of course, it's a matter of then negotiation  
17 because the licensee as to decide as well.

18 A. Of course it is, yes.

19 Q. And let's say it is a different client that's much  
20 smaller. Let's say it's a client with 5 million in  
21 revenue, and that license licenses Blaze Advisor. Is it  
22 the same software that goes to the \$5 million client as  
23 goes to a huge client?

24 A. We have one software.

25 Q. And the fee for the \$5 million client will be same or

1 less or more?

2 A. It will be less.

3 Q. Because of value?

4 A. Yes.

5 Q. Once the license agreement is signed, does -- does FICO  
6 ever revisit the original, you know, ever go to the client  
7 and revisit that price?

8 A. That depends on the circumstances.

9 Q. Okay. All right. Let's just say, let's just say the  
10 client is wildly successful, the client is growing  
11 organically, the client makes, over time is just a much  
12 bigger client, but it's all organic.

13 Does FICO try to revisit that pricing?

14 A. We do not.

15 Q. Well, then let's turn to paragraph 10.8.

16 Of the license agreement with Chubb & Son, as we  
17 see, it's entitled No Assignment. From your decades of  
18 experience, do all of the Blaze Advisor license agreements  
19 have some form of a no assignment clause?

20 A. Yes, they all have some form of it.

21 Q. And what is the, why in some cases is it different from  
22 others?

23 A. It can be negotiated. At times with clients, they  
24 would come back and want to change the language. If we in  
25 the odd case actually used client's paper. We sometimes



1 negotiate it in. So it is a negotiable term, but it is  
2 still there.

3 Q. Is it fair to say that every negotiation with every  
4 client is unique to that client?

5 A. Yeah, they are all unique. Sometimes it gets  
6 interesting.

7 Q. What in overview, can you give us -- well, let's take  
8 it in pieces.

9 The first sentence, "Neither party shall without  
10 the prior written consent of the other party assign or  
11 transfer this agreement or any part thereof." So that's of  
12 course it's mutual, "neither party."

13 What's the business purpose of that first  
14 sentence?

15 A. It's very simple as that bidirectionally, either party  
16 has the opportunity to consent to the assignment.

17 Q. If the licensor/licensee relationship was going to  
18 change by assignment, either party gets to consent? Is  
19 that what you said?

20 A. Yes. That's correct.

21 Q. Now let's -- and now let's go to the second sentence.

22 What's the reason that that's in FICO license  
23 agreements?

24 A. These contracts are all negotiated, in particular for  
25 enterprise agreements, in a unique set of circumstances.

1 There are events, such as mergers and acquisitions or  
2 reorganizations or the bringing on of portfolios, that have  
3 an impact to the circumstances under which it was  
4 originally conceived.

5 So this section is basically saying that these  
6 events are considered an assignment and it requires  
7 consent.

8 Q. Okay. And why does FICO preserve that right to itself  
9 to consent when one of those events happens?

10 A. Well, these particular type of events in specific  
11 actually materially change the basis, could materially  
12 change the basis on which the license was granted and the  
13 price that was set for that license.

14 Q. And you use the word "could." So depending on the  
15 case?

16 A. Yeah. I mean, it could be a very small acquisition and  
17 it's not material or impacting.

18 Q. In your view, regardless of size, if there is one of  
19 these events, FICO's consent is required?

20 A. Absolutely. We want to know about it. We need to  
21 assess that, the opportunity to assess that, and we need to  
22 consent to it. That's what this is saying.

23 Q. So now let's be clear. Consent to what?

24 A. Well, these events are deemed an assignment. That  
25 means that if any one of these things happens, it is an

1 assignment, and therefore we need to consent to it.

2 Q. And what's the outcome -- let's say you do consent,  
3 what's the outcome of that?

4 A. If we do consent, typically there's a modification to  
5 the agreement so that we know who the parties are.

6 Q. Or what the use is?

7 A. And we memorialize that, yes.

8 Q. Now, in this second sentence, "In the event of a change  
9 of control of client or if client is merged with, acquired  
10 by or acquires another entity or undergoes a reorganization  
11 or otherwise acquires the right to process the business of  
12 another, each such event shall be deemed to be an  
13 assignment subject to this section, and the client shall  
14 make no expanded use as a result of any such event."

15 So is there any -- in your understanding, the  
16 license agreement is still with the client?

17 A. Yes.

18 Q. Now, it goes on to say, "And client shall make no  
19 expanded use of the Fair Isaac product as a result of any  
20 such event unless and until Fair Isaac provides such  
21 written consent."

22 What's the commercial reason for that element of  
23 the second sentence?

24 A. It's an additional constraint that until consent is  
25 actually made, lock it down, don't do anything with that

1 software, lock it down.

2 Q. And what's, you know, so trying to understand now the  
3 time period in which, assuming the event triggering the  
4 second sentence, as you understand it from the business  
5 point of view, what's the time period in which this  
6 lockdown of the use would be in effect?

7 A. Well, the time period -- well, first of all, should  
8 have been notified before the event occurred.

9 Q. Yeah.

10 A. But the time period is actually probably specified in  
11 the contract relative to the cure period.

12 Q. Okay.

13 A. Typically it's 30 days.

14 Q. Let's assume that's true. So is that saying, within  
15 30 days under the license agreement, there will be consent  
16 given and going forward maybe with amended terms or consent  
17 not given and the license terminated?

18 A. Yeah. Consent could be given, and there's some  
19 paperwork to follow up on what that actually means.  
20 Consent could be not given, in which case, you know, we  
21 need to talk about the termination of the agreement. New  
22 sets of terms and a new agreement could actually be  
23 negotiated.

24 There's a whole series of things that could  
25 happen. The point of the, the language is to make sure

1 that, you know, in mergers and acquisition there's an  
2 opportunity for synergies. This is referring to the fact  
3 that you have an opportunity to grow the business just by  
4 your nature of that merger and acquisition.

5 That's why you merged or acquired in the first  
6 place, to grow the business.

7 Q. So being bigger gives you opportunities to grow  
8 business?

9 A. It does. And the point here is, you shouldn't be  
10 processing any incremental business as a result of that.  
11 It's lockdown until the consent is actually given and the  
12 terms under which that is given.

13 Q. And that, of course, and I guess we just said, and if  
14 consent is not given, well then the license terminates.

15 A. Yes, which is an option.

16 Q. Is it the preferred option to FICO?

17 A. It is not, no. Our intention is to have long-term  
18 relationships with our clients. There is a, an incremental  
19 value we get from our clients and having them happy with  
20 our products. That is actually feeding into the, strongly  
21 feeding into our business strategy.

22 So, no, we seek to actually find amenable  
23 outcomes in these situations.

24 Q. Okay. Let me just see where I'm at. Would you go  
25 to -- I think it's Exhibit 125.

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1                   And as you see -- I'll wait till it's on the  
2                   screen. This is from Russ Schreiber to Natasha Fowlin, and  
3                   you are one of the CC recipients?

4                   A. Yes.

5                   Q. And Russ says, "Can you put 30 minutes on the calendar  
6                   for this group to discuss ACE's acquisition of Chubb and  
7                   potential licensing expansion fees?"

8                   And obviously you were part of that  
9                   communication.

10                  A. Yes.

11                  Q. Okay. At this point in time, did you have any  
12                  information about the acquisition, other than what was  
13                  publicly announced?

14                  A. No.

15                  Q. Nothing came, no information from Chubb & Son to you?

16                  A. No.

17                  Q. What did you understand -- well, what was your reaction  
18                  to -- you don't have to say what Mr. Schreiber thought, but  
19                  what was your reaction to him saying, "Let's discuss ACE's  
20                  acquisition of Chubb and potential licensing fees  
21                  expansion"?

22                  A. Well, I have regular calls with Russ, because he's our  
23                  insurance global lead, and I'm at this point in time  
24                  running our platform line of business. So we speak on a  
25                  regular basis, and so I had become aware of the merger

1 announcement in October.

2 And in my last conversation with him, I asked him  
3 where do we sit in actually having a conversation with  
4 Chubb about the impending merger. And his answer was, we  
5 don't have one. We don't have any contact. So I asked  
6 him, I'm like let's get Mike Sawyer on the phone. Let's  
7 figure out who do we call. We got to know somebody at  
8 Chubb who can actually address this, right?

9 This is Russ's conclusion about the licensing  
10 event. It's not an unfair conclusion. It typically  
11 happens this way that there's a license event. But the  
12 purpose of this call was actually entirely about how do we  
13 reach Chubb, who do we reach at Chubb, because we need some  
14 information about what's coming.

15 Q. And then did you get any information before the  
16 acquisition closed?

17 A. I did not. I knew that Mike went back and tried a  
18 bunch of his resources, but we did not have any information  
19 all the way through into January.

20 Q. All right. So we've seen from Mr. -- let me turn your  
21 attention to Exhibit 90. And this is Mr. Carretta's  
22 January 27, 2016, letter to Joseph Wayland at Chubb  
23 Limited.

24 Were you aware that -- are you aware of this  
25 notice of breach letter on or about its time?

1 A. I was.

2 Q. Other than, other than -- I take it you -- Mr. Carretta  
3 had authority to send the letter.

4 A. He did.

5 Q. But were you involved at all in the crafting of the  
6 language of the letter?

7 A. Not the language, no.

8 Q. So we'll leave that to Mr. Carretta's testimony about  
9 that.

10 And then if you would turn to Exhibit Number 91.  
11 And now it's Andrew Hopp, Deputy General Counsel,  
12 responding to Mr. Carretta, February 17, 2016. You were  
13 aware of this response, were you?

14 A. Yes.

15 Q. And did you read this response from Mr. Hopp?

16 A. Yes.

17 Q. What was your reaction to what he's saying?

18 A. There were a couple. The first one was, he sort of  
19 missed the point that there was an event that needed our  
20 consent.

21 Q. Okay. Agreed. And the second one was what?

22 A. He, he made a reference to, that the client remained  
23 the same and that that was sufficient, which confused me.

24 Q. Okay. And you say in the second paragraph, he says,  
25 "Our initial findings indicate that the applications that



1 have been utilizing the Blaze Advisor software since 2006  
2 are currently running in the exact same fashion as prior to  
3 the merger transaction."

4 Did that have any significance to you?

5 A. It reassured me that he was following the contract in  
6 that he was, during this period, before consent was given,  
7 he was locking it down. I'm not sure how convinced I was,  
8 but it was reassuring.

9 Q. And he also references that his IT people are in the  
10 process of gathering information. Let's stay in or around  
11 this time frame of February. Were you the -- did you  
12 receive any additional, any information -- let me back up.

13 Before the letter from Mr. Carretta went out, you  
14 said you had no information from Chubb & Son regarding the  
15 acquisition.

16 A. That's correct.

17 Q. And in a reasonable time frame after February 17th, did  
18 you on the business side, receive any information regarding  
19 any more information that wasn't in this letter from  
20 Mr. Hopp?

21 A. No.

22 Q. And then Mr. Carretta responded on February 22nd, and  
23 we've heard his testimony.

24 And were you on the business side with respect to  
25 the working with -- the authority for Mr. Carretta to send

1 Exhibit 92 out? Did you have any?

2 A. I'm sorry.

3 Q. I'm sorry. I was waiting for an answer, but you were  
4 waiting for a question.

5 You okayed Mr. Carretta to send this letter out?

6 A. Yes, I agreed.

7 Q. All right. I was going to ask you something about  
8 this.

9 And the Carretta, the two Carretta letters are,  
10 at the conclusion, encouraging business discussions with  
11 Chubb & Son. Did you share that desire?

12 A. Absolutely. Ten years of wonderful relationship with  
13 Chubb, and they're our first foray into commercial and  
14 specialty lines insurance. They were a great reference.  
15 They spoke at FICO World. They took reference calls for  
16 clients on new sales all the time, and they were great  
17 people too. They were, they were good to work with.

18 Q. So then let's move forward to Exhibit 94. You were  
19 aware of -- the communication of course is from Tamra  
20 Pawloski to Mike Sawyer, carbon copy to Russ Schreiber; and  
21 then the second page of the document has a proposal  
22 February 25, 2016, sent to FICO.

23 Were you aware of this response from Chubb & Son  
24 at the time?

25 A. Yes, it was sent to me.

1 Q. Okay. And -- well, what was your reaction and reading  
2 of it?

3 A. It's what I would call a non-starter. That basically  
4 means it cannot be accepted on its face value.

5 Q. Why do you say that? And give us the details for that.

6 A. There's a number of reasons why, but let me start with  
7 the most egregious one of them, which is this statement  
8 here that the applications listed below, "That currently  
9 utilize Blaze Advisor software, these are the same  
10 applications using the software both prior to and after the  
11 merger. Under the above proposal, Chubb shall have the  
12 right to change the applications utilizing Blaze software  
13 at any time at its sole discretion without FICO's concept  
14 so long as the named applications do not exceed 15," the  
15 amount of 15.

16 We grant licenses. Our clients don't grant  
17 themselves licenses. That's a core tenet of our license  
18 agreement. Besides that, fundamentally there's no  
19 governance on that statement. They could call anything,  
20 you know, an application and say that's going here from  
21 there to here, right.

22 There's no definition of it. There's no common  
23 understanding of it. That alone completely threw the  
24 proposal out of question.

25 Q. Okay. Did you draw a judgment whether it was a good

1 faith or bad faith proposal?

2 A. My impression was, this was a bad faith proposal.

3 Q. For the reasons you said or for any additional ones?

4 A. For the reasons I just said.

5 Q. As a consequence of receiving this proposal, did you

6 have any -- was there any reason to doubt that Blaze

7 Advisor would be used in the new larger organization now

8 called Chubb Limited now, the 30 plus billion dollar

9 organization?

10 A. No. The letter itself is very clear. They want the

11 right to use the 15 applications and change them however

12 they want, whenever they want. So it's clear that they're

13 talking about the 15 to begin with, but they're talking

14 about open door policy for anything in the future.

15 Q. In any single Blaze Advisor application, is it possible

16 to change the functionality within that application to

17 service more business?

18 A. The intention of the license definition and grant is

19 no.

20 Q. Under the proposal of February 25, 2016, what's your

21 interpretation?

22 A. That's exactly what she's asking to do.

23 Q. If you would go to Exhibit 227. And we see this is a

24 Chubb Corporation annual report of 2005.

25 A. Yes.

1 Q. And on page 22, if we go to that, we saw a similar list  
2 earlier. Here we have the list of the officers of the  
3 division Chubb & Son, right?

4 A. I'm sorry. 22 or 24?

5 Q. Yeah, I'm on page 20 -- well, the Bates number, the  
6 Exhibit Number is 0227-024.

7 A. I'm there now.

8 Q. Okay. So there we have the, well the whole page is  
9 bigger than on the screen, and there we have the officers  
10 of Chubb & Son at that point in time.

11 And then I want to go to, I want to go to page 4  
12 and just use this as a reference where we see net written  
13 premiums grew 2 percent to 12.3 billion, on page 4. It  
14 would be the second full paragraph.

15 A. Can I ask you to clarify page 4 of what? It's the  
16 Bates page 4?

17 Q. Yeah. So page 2 of the actual document, and at the  
18 bottom it says P-0227-004.

19 A. Thank you. Yes, I see it now.

20 Q. Okay. So, so that's a reference point for the 2006  
21 license agreement?

22 A. Yes.

23 Q. And then I think we've mentioned that that was the data  
24 point used in pricing of the original license agreement in  
25 2006, correct?

1 A. It was a data point used in several pricing exercises  
2 in 2006, yes.

3 Q. Right. Right. But as a data point. And then let's go  
4 to 958.

5 And the front page is the Chubb Limited annual  
6 report for 2016.

7 A. Yes.

8 Q. And let's go to page 3 of the annual report, not -- or  
9 5 on the exhibit number or 3 on the report.

10 A. Page 3.

11 Q. Yes.

12 A. There.

13 Q. All right. And here it reports that, if we can go to  
14 the left-hand column, "We completed to my fellow  
15 shareholders," there we go. Right at the top, "We  
16 completed the largest merger in insurance company history  
17 and integrated two complementary insurance organizations,  
18 ACE Limited and the Chubb Corporation, transforming  
19 ourselves into the highest quality and largest  
20 publicly-traded property and casualty insurance company in  
21 the world."

22 And if we go to -- trying to find the reference  
23 to, the reference to the size of the new organization, and  
24 honestly I'm not finding it fast enough.

25 So let me simply just ask, In terms of the

1 value-based pricing of FICO and in terms of the business  
2 purposes around that second sentence in paragraph 10.8,  
3 what from your business point of view is the consequence of  
4 Chubb & Son going from \$12 billion -- going from being a  
5 part of a \$12 billion organization to being a part of a 30  
6 plus billion dollar organization?

7 A. That is a very significant change in circumstances.

8 Q. And then if we go to Exhibit 95. And this is building  
9 off of or in the same time, the next day after that  
10 commercial proposal of February 25th.

11 Mr. Carretta says, "The proposal was not  
12 acceptable from our business and compliance teams, and I  
13 confirm it is rejected."

14 A. Yes, that's what it says.

15 Q. And you authorized that?

16 A. Yes.

17 Q. And then if we go to Exhibit 103, this is  
18 Mr. Carretta's notice of termination letter, which we've  
19 gone through with him, the termination being effective the  
20 next day. And you --

21 Did you authorize the sending of the termination  
22 letter as well?

23 A. Yes, I agreed.

24 Q. I would like to now change topics, and I want to talk  
25 about the, I want to talk about the, what you know about

1 the third-party consultant called DWS Group, and then after  
2 that I want to ask you questions about what you know about  
3 the third-party consultant called AppCentrica. We will  
4 take them one at a time.

5 So if you would go to Exhibit 147A, please.

6 A. I am there.

7 Q. All right. And if we can put that on the screen. I  
8 see the cursor, but -- he's having a little glitch. Hang  
9 on a second. There we go.

10 From the first page, you see this is Federal  
11 Insurance Company's Second Supplemental Answer to  
12 Interrogatories 2, 3 and 4.

13 And let's look at interrogatory 2 on the next  
14 page.

15 MS. GODESKY: Mr. Hinderaker.

16 MR. HINDERAKER: Yes.

17 MS. GODESKY: I just want to confirm you are  
18 showing 147A because it says 147.

19 MR. HINDERAKER: It's on the screen.

20 MS. GODESKY: Okay.

21 MR. HINDERAKER: No. 147A. All the blackout.

22 MS. GODESKY: Sorry.

23 MR. HINDERAKER: We seem to be having a  
24 transmission issue.

25 All right.



1           So interrogatory number 2, if we can get that a  
2       little bigger, please.

3       BY MR. HINDERAKER:

4       Q.   "Identify every person, division or entity, other than  
5       employees of the division Chubb & Son, to whom Federal has  
6       disclosed the FICO Blaze Advisor software after June 30,  
7       2006."   And then there are those subparts.

8           Now let's go down the page to the second  
9       supplemental answer.   It would be page 2 of the document.  
10      I think you are on page 3.

11           Well, let me read it.   You have it in your  
12      binder.

13      A.   I do.   I do.

14      Q.   The second supplemental answer, "Disclosure of the  
15      Blaze Advisor software was made to at least the following:  
16      One, Chubb Insurance Company of Europe SE.   Two, Chubb  
17      Insurance Company of Canada, including through its  
18      relationship with AppCentrica and Chubb Insurance Company  
19      of Australia Limited including through its relationship  
20      with DWS Group."   Do you see that?

21      A.   I do.

22      Q.   And I'm going to first go, before more questions, we'll  
23      go to the interrogatory number 3, if we could get there.

24           Great.   Interrogatory number 3, and you see it  
25      says, "Identify every person, division or entity, other

1 than employees of the division Chubb & Son, of which  
2 Federal is aware that has used the Blaze Advisor software  
3 after June 30, 2006."

4 And in terms of the interrogatory 3, the second  
5 supplemental answer reads, if we go down a little bit,  
6 "Chubb Insurance Company of Europe SE, Chubb Insurance  
7 Company of Canada including through its relationship with  
8 AppCentrica, and Chubb Insurance Company of Australia  
9 Limited including through its relationship with DWS Group."

10 And it goes on to say more information about the  
11 dates of the first use, which are not pertinent to my  
12 questions to you now.

13 When -- this obviously was produced, was a  
14 product of the lawsuit, this interrogatory.

15 When did you, when did you first become aware  
16 that DWS Group was using Blaze Advisor?

17 A. I don't know the exact day, but it was in March of  
18 2016.

19 Q. Of 2016. And when did you become aware that  
20 AppCentrica in Canada was a disclosed use and accessed  
21 Blaze Advisor?

22 A. It was during the litigation.

23 Q. Okay. So let's then discuss, let's then discuss your  
24 knowledge about DWS.

25 A. Okay.

1 Q. So if you would go to Exhibit 1114.

2 A. I'm there.

3 Q. You are faster than me.

4 This is a message, email, Paul Swyny, if I  
5 pronounce that correctly, at FICO.com. Who is he?

6 A. He's a client partner in Australia. A client partner  
7 is a, it's kind of a salesperson except they own accounts.  
8 So they're the relationship owner of the accounts.

9 Q. Okay. And was Chubb Insurance Company of Australia one  
10 of his accounts, did you know?

11 A. I believe it was, yes.

12 Q. And Russ Schreiber is on the email. Mike Sawyer is on  
13 the email, but you as well are on the email.

14 A. Yes.

15 Q. And so, and then with the email there's more documents  
16 attached the same date, March 24, 2016, and I guess I'd  
17 like to know the context in which Exhibit 1114 came to you.

18 A. We had actually taken the activity of sort of searching  
19 our records for who in Chubb and DWS was actually reaching  
20 out to FICO, because it had come to our attention that  
21 there was some work being done there. The reason that  
22 surfaced is because in coordination and communication of  
23 our ongoing discussions with Chubb and the notice of the  
24 breach, these things filter through our systems. So when  
25 that happens, we start getting notification of sort of

1 inbound events that are related.

2 Q. Notifications to where?

3 A. They actually called me.

4 Q. Okay.

5 A. Right? So it's not formal. It's not like triggering  
6 some system somewhere. It's like, hey, we got a call from  
7 somebody that said they're working with Chubb, thought you  
8 should know.

9 Q. Okay. And then with respect to DWS Group, did you get  
10 knowledge that they were working with, the DWS Group was  
11 working on Blaze Advisor?

12 A. Yes.

13 Q. How did you get that knowledge?

14 A. Well, the community that we run, which community is,  
15 they were like a chat board, online chat board. It's a  
16 place for clients or prospects to go and ask questions  
17 about Blaze or any of our other products. There was a chat  
18 that had kicked off on that community site.

19 Q. Okay.

20 A. And Jeremy Chen was, he's the monitor, the person who  
21 typically answers the community site. In there he clearly  
22 identified that he was working with Chubb & Son and working  
23 on an existing project.

24 Q. Well, let's go to the page that has the Bates number  
25 FICO0000488 as part of this exhibit.

1 And that you were in this chain of  
2 communications. And Paul Swyny says, "We were contacted  
3 out of the blue by someone claiming to be from or represent  
4 Chubb in Australia and demanding help with their Blaze  
5 project. We've been as accommodating as we can and will  
6 continue to support, but the chap we are in contact with is  
7 challenging, to say the least."

8 And this is about the time you also were aware of  
9 this happening?

10 A. Yeah. Actually the individual on the community site  
11 was referred to reach out to our local support, and Erwan  
12 is our local expert on Blaze.

13 Q. And on the next page you were getting the report from  
14 Paul Swyny. Am I pronouncing that right?

15 A. Swyny.

16 Q. Swyny. You are getting the report. I had a chat with  
17 Imran at DWS today, and I think I am now getting to the  
18 bottom of what is going on here. Chubb and Australia want  
19 to evaluate a solution built by Chubb Canada, which has  
20 been developed on Blaze 7.1, and they have chosen a third  
21 party based in Melbourne DWS to help us get the evaluation  
22 up and running.

23 Now, these communications are after, just looking  
24 at the time frame, we know they're after the license  
25 agreement was terminated.

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1 Is that the correct context?

2 A. No. This was actually March 21st.

3 Q. Okay. I'm sorry. Yes.

4 A. 2016.

5 Q. So just a week before the termination.

6 A. If I do the math, yeah, a week.

7 Q. Yeah. Yeah. Sorry.

8 And with respect to the paragraph 3.14 that we  
9 looked at earlier from the license agreement, "No  
10 disclosure, use or access by an unauthorized third party."

11 First, did FICO ever give DWS Group authority to  
12 use, access, use or access Blaze Advisor?

13 A. Not for the purpose that he's working on here, no. We  
14 did not give any authority to DWS to use the software.

15 Q. And is it fair you -- regardless of the purpose. Okay.  
16 You are saying because he's using it for Blaze Advisor.

17 A. Yeah. And he's also specifically referencing that he's  
18 working with Chubb Canada activities.

19 Q. No authority from FICO for DWS Group to be using or  
20 accessing Blaze Advisor?

21 A. That is correct. Yes.

22 Q. Now let's go to 1113.

23 And we should wait a minute, Your Honor, before  
24 we publish it?

25 And this is Paul Swyny, April 3rd, Imran Aziz or

1 to Imran Aziz, like I said April 3, 2016. And now this is  
2 after the termination of the license agreement.

3 A. It is.

4 Q. Were you aware of this document on or about its date?

5 A. I eventually became aware of it shortly after, yes.

6 Q. Yes. And the reason, why was it brought to your  
7 attention?

8 A. It was informing me of the fact that he was  
9 communicating to DWS that we're not going to support you.

10 MR. HINDERAKER: Your Honor, I offer  
11 Exhibit 1113.

12 MS. GODESKY: No objection.

13 THE COURT: 1113 is received.

14 BY MR. HINDERAKER:

15 Q. And so in this communication, "Hi, Imran." That's the  
16 DWS person. "Regarding Blaze Advisor support, I have been  
17 informed by our legal department that it has notified  
18 Chubb & Son that it has breached our license agreement,  
19 which includes the M&S schedule." Is that maintenance and  
20 support?

21 A. Correct.

22 Q. "This was followed up with a termination notice last  
23 week. I suggest you check with your management team if you  
24 are not aware of this development."

25 So that was FICO's position with respect to the

1 use of Blaze Advisor by DWS Group?

2 A. Yes.

3 Q. Then if you would go to 1116.

4 And I think we should wait on publishing this as  
5 well, Your Honor.

6 Would you identify what P1116 is?

7 A. Yeah, this is a log of a chat stream from our community  
8 site that I was mentioning earlier.

9 Q. And did you review this on or about its time regarding  
10 how Blaze Advisor was being used?

11 A. Yeah, this was the first indication that I was given.  
12 Jeremy Chen called me.

13 Q. Okay. And this is the -- Jeremy Chen, as you  
14 mentioned, the person receiving calls at the help desk.

15 A. No, it was not help desk. It's a community site.

16 Q. I'm sorry.

17 A. He's the product manager, and he's monitoring the  
18 community site, so he's answering questions there.

19 Q. Okay. My bad. All right.

20 And then Jeremy Chen brought this to your  
21 attention?

22 A. Yeah. People call me about things like this all the  
23 time.

24 Q. And the first page references the fact question asked  
25 by Imran Aziz at DWS.com.netAU, May -- or March 1, 2016.



1           So this was the information that you had before  
2           termination?

3           A.   That -- yes.

4           Q.   And then on page 3 of 3 in this community post he is  
5           saying, "There are a couple of things I have tried on Blaze  
6           which are strange to me, and for them I need the answers."

7           A.   Yes.

8           Q.   And then it was following this, as we saw in the  
9           earlier exhibit, that he was notified that maintenance and  
10          support is not being offered.

11          A.   Yeah, this is a series of back and forth about, he's  
12          essentially trying to pull in a Blaze project, and he's  
13          having trouble with it, was the gist of what's in this  
14          community chat.

15          Q.   Okay. Had you ever been, had you been contacted at all  
16          by Chubb & Son or Chubb Insurance of Canada or anybody  
17          about permission for DWS to use and access Blaze Advisor?

18          A.   I was not.

19          Q.   Are you aware of anybody at FICO who was?

20          A.   I am not.

21          Q.   And as you said, at this time -- in fact until the  
22          lawsuit you were unaware, completely unaware, that  
23          AppCentrica was consulting and using Blaze Advisor on  
24          behalf of Chubb Insurance Company of Canada?

25          A.   That is correct.

Q. Let's go to Exhibit 0655A. And this is Defendants' Response to Plaintiff's Second Set of Requests For Admissions. This is another litigation generated document.

I'd like to go to the fourth page, if we can, and request number 20.

And so the request to Federal is, "Admit that Federal has disclosed the Blaze Advisor software to Chubb Insurance Company of Europe SE."

And the response is, "Federal admits that Chubb Insurance Company of Europe Se made use of Blaze Advisor software," period. And then there's legal stuff after that.

If we looked at Request For Admission Number 21, "Admit that Federal has distributed Blaze Advisor software to Chubb Insurance Company of Europe," and if we looked at Request For Admission 22, "Admit that Federal permitted Chubb Insurance Company of Europe to access the Blaze Advisor software," we'd see that the answer is identical in each instance.

Let's look at the request number 23.

"Admit that Federal has disclosed the Blaze Advisor software to Chubb Insurance Company of Canada," and the answer is, "Federal admits that Chubb Insurance Company of Canada made use of Blaze Advisor software," period.

And if we looked at number 24, "Admit that

1 Federal has distributed Blaze Advisor software to Chubb  
2 Insurance Company of Canada." And if we looked at number  
3 25, "Admit that Federal permitted Chubb Insurance Company  
4 of Canada to access the Blaze Advisor software." The  
5 answer is the same in every instance.

6 And now let me just turn you to number 26.  
7 "Admit that Federal has disclosed that Blaze Advisor  
8 software to Chubb Insurance Company of Australia."

9 And the answer is, admission is, "Federal admits  
10 that Chubb Insurance Company of Australia Limited made use  
11 of Blaze Advisor software." If we looked at the, at  
12 Request For Admission 27, "Admit that Federal has  
13 distributed the Blaze Advisor software to Chubb Insurance  
14 Company of Australia Limited."

15 If we looked at number 28, "Admit that Federal  
16 has permitted Chubb Insurance Company of Australia to  
17 access the Blaze Advisor software." Again, in each  
18 instance the answer is, "Federal admits that Chubb  
19 Insurance Company of Australia made use of Blaze Advisor  
20 software."

21 When did you first become aware that Blaze  
22 Advisor software was used outside of the United States by  
23 any company within the Chubb group of insurance companies?

24 A. I first became aware in January of 2016.

25 Q. And what was the context in which you became aware of

1 that?

2 A. It was leading up to the merger event and then  
3 subsequently.

4 Q. I'm sorry. You have to speak a little louder to the  
5 mic.

6 A. It was leading up to the merger event and subsequently  
7 our sending of the breach notice that Mike Sawyer and Russ  
8 Schreiber made me aware of their knowledge of that.

9 Q. Let's go back to the, let's go back to the license  
10 agreement. And on the first page, of course, we touched  
11 this base, the client is Chubb & Son, a division of  
12 Federal, and always has been.

13 So let's go to Amendment Number Two, and you see  
14 on the second page of Amendment Number Two it says, "For  
15 the purposes of this amendment." Right above payment you  
16 can highlight that paragraph. There we go.

17 "For the purposes of this Amendment Two, the  
18 enterprise-wide license shall mean that client and its  
19 affiliates may use the Fair Isaac products for their  
20 internal business purposes with no limitation on the number  
21 of seats or CPUs, subject to and in accordance with all of  
22 the provisions of the agreement."

23 Have I read that so far?

24 A. Yes.

25 Q. Okay. And as your understanding of this license

1 agreement, the client is whom?

2 A. Chubb & Son.

3 Q. The division?

4 A. The division of Federal.

5 Q. Okay. And then this Amendment Two goes on to define  
6 affiliates, does it not?

7 A. It does.

8 Q. "Affiliates shall mean any other entity directly or  
9 indirectly controlled by client, where control means the  
10 ownership of more than 50 percent of the aggregate of all  
11 voting interests representing the right to vote for the  
12 election of directors or other managing authority in an  
13 entity."

14 Have I read that right?

15 A. Yes.

16 Q. Is that, we have heard the reference that this is a  
17 downstream only definition for affiliates.

18 A. From the ownership clause, yes.

19 Q. Yes. Now let me represent to you, and it's a  
20 stipulated fact, that Chubb & Son does not have any  
21 affiliates. Chubb & Son the division does not have any  
22 affiliates.

23 In your commercial reading of this definition, is  
24 there any other way to read the definition that to be an  
25 affiliate you must be owned 50 percent by the client?

1 A. No.

2 Q. From your point of view, was the commercial purpose of  
3 the license agreement as signed, with the license agreement  
4 as signed, if there is, if there are no affiliates of the  
5 client, does that change anything in your view regarding  
6 the license agreement?

7 A. No.

8 Q. Why not?

9 A. Still with the client.

10 Q. Now, we saw in Mr. Carretta's notice of termination  
11 letter that it was effective, excuse me, effective the next  
12 day. And he referenced in that letter paragraph 9.3 of the  
13 license agreement. So let's just go to that for a moment.

14 Effective termination. We all can read it.  
15 Client shall immediately cease using all Fair Isaac's  
16 products and so forth.

17 A. Yeah.

18 Q. Okay. And we saw from Mr. Carretta's letter that he  
19 specifically pointed out that provision and the  
20 consequences of not stopping use.

21 Today, as of today -- well, at any time, did you  
22 receive a communication from Chubb & Son that they had  
23 stopped using Blaze Advisor?

24 A. I have not.

25 Q. Did you ever receive a return of the documentation or a

1 certification that the documentation had been destroyed?

2 A. I have not.

3 Q. Let's turn to the subject matter of ACE American. We  
4 saw in earlier testimony that there's a small license  
5 agreement between FICO and ACE American. Are you generally  
6 familiar with that?

7 A. I am.

8 Q. Does that license agreement have any, any applicability  
9 to the use of Blaze Advisor by Chubb & Son, the client in  
10 this agreement?

11 A. It does not.

12 Q. When did you first learn that ACE American Insurance  
13 was using Blaze Advisor in connection with selling  
14 insurance, using Blaze Advisor in the applications that  
15 previously had been the ones run by Chubb & Son?

16 A. In this lawsuit.

17 Q. Never before?

18 A. No.

19 Q. So then it's obvious to say that no one from ACE  
20 American ever reached out to FICO to your knowledge to try  
21 to license Blaze Advisor to use in connection with selling  
22 insurance?

23 A. No.

24 Q. I want to now turn to, I want to now turn to  
25 standard -- well, I want to now turn to the experience,

1 your personal experience in the negotiation of license  
2 agreements.

3 A. Okay.

4 Q. And I guess let's begin with personally, speaking of  
5 you personally, not me. Speaking of you personally.

6 How many negotiations of -- for Blaze Advisor  
7 license fees have you been a part of?

8 A. That would be really hard to say, but it's definitely  
9 hundreds and hundreds of them.

10 Q. And is it fair to say that you've been negotiating  
11 Blaze Advisor license agreements in one form or another  
12 since maybe 2002 or 2000?

13 A. Even before that.

14 Q. And as we noted in 2006 time frame, then you were the  
15 person with final authority on pricing. Is that still, was  
16 that true still in 2016?

17 A. Yes. In 2016, absolutely.

18 Q. Have you experience in negotiating agreements with  
19 clients where, where the license agreement that they have  
20 has come to an end, and you're negotiating with them for a  
21 new license agreement?

22 A. Yes.

23 Q. And you've had experience where you're negotiating a  
24 license agreement with someone who has never been a client  
25 as well?



1 A. Yes.

2 Q. And you mentioned before that, well, discounting  
3 practices have changed. The guidelines for pricing really  
4 have not, since 2003?

5 A. Yeah. The core -- the core pricing model has not  
6 changed, no.

7 Q. So I would ask you to go to Exhibit 421, please.

8 A. I'm sorry. You said 421?

9 Q. 421. 418. It used to be called 421. Now it's called  
10 418. Let's go to 418.

11 This is, as you see, Business Science Enterprise  
12 Decision Management Design and Deployment, Tools and  
13 Infrastructure Software Global Price List, 10/10/03.

14 I would like to first start by just understanding  
15 the pricing methodology that FICO applies for the Blaze  
16 Advisor licenses.

17 A. Okay.

18 Q. And let's begin with, with this document, and if you  
19 could educate us about how to read it and how to use it.

20 A. Okay.

21 Q. All right? And by the by, it's been in place since  
22 2003. Over the decades, what's the reaction, what's the  
23 reaction from the marketplace to this methodology that FICO  
24 applies in pricing?

25 A. Yeah. Ultimately the named application licensing that

1 we do in this guide became the most popular form of it.

2 Enterprise license agreements were very popular up front.

3 Today we don't sell enterprise license agreements anymore.

4 Most clients aren't interested in it.

5 But those two initially out of the gate were the  
6 most popular.

7 Q. Okay. And as we go through this then, we will try to  
8 keep that in mind that there are two flavors, the named  
9 application and the enterprise, and we'll treat them,  
10 excuse me, as best we can as separate things so we're not  
11 getting ourselves confused, or me confused.

12 So let's go, if you would walk us through -- so  
13 at the time of the notice of breach letter in 2016, these  
14 are in place. Would you walk us through how these  
15 guidelines work? Maybe we start at 2.1.1 or 2.1.2.

16 A. Yeah, they're both related.

17 Q. Okay.

18 A. So in software industry there's two types of license  
19 grants, generally speaking, annual or subscription and  
20 perpetual.

21 Back in this time frame and for a number of years  
22 following, most software, or most clients actually  
23 preferred to buy perpetual licenses. The primary  
24 distinction between the two of them is, perpetual means  
25 that the license continues to go on as long as the license

1 agreement terms are being upheld.

2 In the annual licensing, it's for a period of  
3 time called a term. So clients can pick that, anywhere  
4 between, you know, one-year and five-year. We don't sell  
5 longer than five-year terms at this point in time.

6 And essentially the client is signing up and  
7 saying, for a period of time I'm going to license the  
8 software. And that's what this is speaking to here, is  
9 those two types of licenses, perpetual and annual.  
10 Sometimes we use the term and annual interchangeably. So  
11 forgive me if I do that.

12 Q. These, of course, are licenses, not purchases.

13 A. They are licenses. Absolutely.

14 Q. Permissions to use.

15 A. Permissions to use under the contract.

16 Q. Okay. This -- is there anything more, I mean, there's  
17 other things said here. Is there anything more of interest  
18 from your point of view in describing the FICO pricing  
19 methodology that comes out of 2.1.2 or 2.1.2?

20 A. It does speak to this concept of annual maintenance and  
21 support. So I'm sure this is going to come up, so you  
22 might as well cover it.

23 So there's a license to use the software, and  
24 then there's a service that FICO offers called maintenance  
25 and support. And it covers two categories, general

1 categories of things.

2 One, the product continues to evolve. We invest  
3 it in. We add new features to it. Hopefully we don't get  
4 defects, but if there are, we fix them.

5 And then we also offer support lines you heard  
6 Chris Ivey talk about. That's what he does, so you can  
7 call him and ask for help, ask questions, troubleshoot  
8 problems.

9 So the maintenance and support is a service. You  
10 pay for that every year. And what this section is  
11 referring to is how that maintenance is calculated.

12 In perpetual it's [REDACTED] is what is listed  
13 here. You will see later in the section, you can't go  
14 below [REDACTED]. It's a negotiated term.

15 And on the annual maintenance, you will see here  
16 that at this time it was included in the fee. Later on we  
17 had to separate them out because of our revenue accounting  
18 and the way our accounting systems -- our accounting for  
19 revenue actually occurs.

20 Q. Okay. If we move forward to 2016, was there a standard  
21 maintenance percentage at that point?

22 A. Yeah, things changed throughout the years, but in  
23 February of 2015, all maintenance was standardized across  
24 all products at [REDACTED], and it was required. You  
25 couldn't get out of it. You had to buy maintenance.

1 Q. And by -- so we've seen testimony of Blaze Advisor  
2 having different versions. We have the copyright  
3 registrations, you know, that started, 3.0 I think, and go  
4 forward by many, many verges.

5 If a client wants to be updated or upgraded to  
6 the next version of Blaze Advisor, is that a right the  
7 client has because it pays for maintenance?

8 A. If they are paying for maintenance and support and they  
9 are current on their payments then, yes, they get access to  
10 the new software.

11 Q. Let's go to then, if it's helpful, but you're the one.  
12 I'm looking at 2.2.2, Standard Order Volume Discount  
13 Schedules. Do I have that right?

14 A. Yeah. We don't use that. We -- it was put into this  
15 price guide as sort of a way to get clients to buy over  
16 time. Essentially, it's you buy a little bit more now, and  
17 little bit later, you buy some more and buy some more. And  
18 over time, we will give you bigger discounts because you  
19 buy a lot from us.

20 Q. Excuse me for a moment. I think I misspoke to 2.2.2,  
21 but it's really 2.2.1?

22 A. Yeah, 2.2.1. This is our standard discount schedule  
23 for a particular transaction. So if a client is going to  
24 buy software from us, depending on the amount that they're  
25 going to spend, there's an allowable discount.

1           There's no requirement to discount, but there is  
2           an allowable discount. This gives our salespeople the  
3           latitude to request and think in the scope of how much can  
4           they actually discount the software.

5           There is authority levels on these different  
6           tiers. So individual salespeople can discount [REDACTED]  
7           [REDACTED] without asking. They have to ask their manager to  
8           go to [REDACTED], and so on up the line. You can see here  
9           that it's capped at [REDACTED].

10          That doesn't mean we didn't discount more than  
11          [REDACTED]. It was just not publicized, and those deals  
12          that were above that have to have senior executive  
13          management approval.

14          Q. And is that discounting, what's the practices today  
15          with respect to 2.2.1 or in 2016?

16          A. Yeah. We don't use this discount schedule anymore. We  
17          haven't use it in a long period of time. As I mentioned  
18          earlier, our discounting practices have changed  
19          dramatically over the years.

20          Q. Is there any use -- I jumped us ahead to 2.2.2. Is  
21          there useful information there in terms of understanding  
22          standard pricing methodology?

23          A. Not really. As I was saying, this is a, this is an  
24          option for discounts over time, and they are lower amounts.  
25          Clients didn't really prefer this. They actually preferred

1 negotiating each deal. So very infrequently did we use  
2 this and only early on.

3 Q. Okay. Well then let's go to 2.2.3, Marketing Reference  
4 Client Discount.

5 A. Yeah. We, particularly early on as we're trying to get  
6 this business off the ground, we are interested in  
7 marketing attribution. We need clients to stand up and  
8 say, hey, yeah, we like this software. It works well.  
9 Create case studies and tell us about what benefits they  
10 got from it, press releases, speaking engagements, anything  
11 that's marketing related to sort of drum up new business.

12 The easiest way and the best way for us to get  
13 business is for our clients to talk to other clients or  
14 prospects about how great the software was. So we would  
15 incent clients to say, hey, look, we'll give you [REDACTED]  
16 [REDACTED] additional discount if you actually become a  
17 marketing reference.

18 Q. Is that influence in pricing true as of 2016 to the  
19 same extent?

20 A. We don't really give marketing discounts anymore.  
21 That's kind of frowned upon in the industry. It's sort of  
22 like a sort of bribery thing, so we've taken that off. We  
23 still ask for marketing attribution, but we don't give  
24 discounts for it, no.

25 Q. Okay. Well, should we move to, move to Section 7,

1 Blaze Decision Management.

2 So tell us what we need to know from 7.1, the  
3 introduction.

4 A. So at this time there was two separate products, the  
5 Blaze Advisor and the Blaze Decision System. This is a  
6 holdout because FICO when they bought HNC had their own  
7 sort of rules engine capability called Decision System.

8 So we had clients who were using this, and we  
9 cobranded them Blaze, but they were two separate products.  
10 Shortly after this, we merged those products, and anybody  
11 who was a Decision System customer became a Blaze customer,  
12 and all that functionality that was in Decision System  
13 became available in Blaze.

14 And what you see underneath that, though is a  
15 listing of options. You have seen some of these already.

16 Q. Mr. Waid, before we go there, let's -- no. Stay in  
17 this section, but I just want to point out at the first  
18 bullet point, Blaze Advisor, which has two components that  
19 are sold separately. And here we have the guidelines  
20 talking about Blaze Advisor development, and then Blaze  
21 Advisor deployment.

22 A. That's correct.

23 Q. Okay. I just want to tie that back to the license  
24 agreement. All right.

25 So I interrupted you. You were going to say?



1 A. Yeah. I was just going to say that you will see these  
2 listing of add-on options.

3 The Java code generation high speed processing,  
4 you will see it referenced in here as high performance  
5 option, today it's called the compile sequential option.  
6 It's the same thing, but we support COBOL, Java and C  
7 languages. These are all languages that our clients might  
8 want to work with in this sort of compile mode, very  
9 separate from the RETE engine that I talked about. Those  
10 are two totally separate things, somewhat of a unique  
11 offering for Blaze.

12 You will see reference to XML manager insurance.  
13 This is a way of getting application data into Blaze.

14 Most of these, the rest of these options, the  
15 scorecard, the reporting module, the rule analyst  
16 automation model, the reporting module became standard in  
17 Blaze. We just added them.

18 Q. We saw in the license agreement with Chubb & Son the  
19 platform .NET as well as the platform Java?

20 A. Yes, those are options as well.

21 Q. Okay. So this portion of the pricing guideline ties  
22 back to that element of the license agreement.

23 A. Yes.

24 Q. Should we go to Section 7.3, does that make sense at  
25 this point, for deployment pricing?

1 A. Yeah. We can talk about it. I mean, early on we  
2 offered an option to license Blaze by the size of the  
3 machine, the server machine it was installed on. So  
4 servers have different sizes, and the primary metric at  
5 this time for servers, before Cloud and virtual servers  
6 came into being or predominantly into being, was the number  
7 of CPUs and how many core processing units are on it.

8 The more there are, the faster the machine runs.  
9 Basically you can install Blaze on it and run whatever you  
10 want on that machine. That was this licensing model.

11 The only place that this actually took hold was  
12 the U.S. Government. They like to buy this way. Most  
13 clients prefer the named application license price.

14 Q. Okay. So then let's go to that named application  
15 license 7.4.

16 Can you, as it says, "Business function pricing  
17 scopes the use of the deployment license to a single named  
18 project or business process within a specified business  
19 unit."

20 You have project size, project license fee, and  
21 then other categories as you see in this, on the left-hand  
22 side.

23 I'd appreciate it if you would walk us through  
24 the guiding information at the top of the table and then  
25 the table itself.

1 A. Yeah. So the, the information at the top is  
2 delineating the fact that the licenses for deployment, not  
3 development, are all based on the scope or size of the  
4 business project in question.

5 The latter part actually refers back to how that  
6 sizing actually occurs, which there was a more  
7 sophisticated way of introducing sizing after 2003, but the  
8 last part of this is actually coming back to some of the  
9 option pricing that was included on the previous page.

10 The table and the predominant element here is  
11 that the table is repeated, but you can see, as I, said  
12 Blaze Advisor and Decision System were separate products at  
13 this time, and they merged later.

14 But ostensibly the way that the sizing worked was  
15 this concept of, you size the application into small,  
16 medium large or very large. And if it was a small, you go  
17 across, your sale price was [REDACTED]. If it was a medium,  
18 your sale price was [REDACTED].

19 Q. And then to be clear, this is before any negotiation.

20 A. Correct. This would be our standard pricing. This is  
21 before anybody sat down and tried to get a better deal.

22 Q. Okay. I interrupted you, but did you finish?

23 A. Yeah.

24 Q. Okay. And then 7.4.1, Named Application, Business  
25 Function Pricing For Blaze Advisor Options.

1 A. Yeah, this is just referring to some of the options  
2 that were add-ons.

3 Q. That we looked at on the prior page?

4 A. Correct.

5 Q. So we have looked at 7.4 Named Application, Pricing For  
6 Deployment. And now I guess we should turn to 7.5,  
7 Enterprise Business Unit Pricing Guidelines.

8 Would you describe that for us, please?

9 A. Yeah. So you've already heard about the fact that we  
10 have these named application licenses as one way of buying.  
11 Generally speaking, as clients buy more application  
12 licenses from us and they spend for money, it becomes  
13 easier for them to license an enterprise-wide license.

14 This like is outlined in the contract that you  
15 saw, frees up the scope, so you don't have to count how  
16 many applications that you have. It says and is restricted  
17 to a scope definition. Specialty lines business or all of,  
18 you know, Chubb & Son, division of Federal, but it's the  
19 broad scope.

20 There is a number of factors that come into it  
21 that are listed here up front. We do take into account how  
22 many applications you are going to end up buying. So, you  
23 know, if you're a bank, you're going to end up buying lots  
24 of applications from Blaze Advisor because you are going to  
25 find value for it in a number of places.

1           If you are a manufacturing company, you are  
2           probably not going to buy a lot of application use from  
3           Blaze Advisor. So those factors are taken into account, as  
4           well as a bunch of others, but the core sort of pricing  
5           mechanism is in the table. It's relatively simple and  
6           straightforward.

7           If there was a \$2 billion entity that wanted to  
8           license Blaze Advisor, it would be [REDACTED]. If it was a  
9           \$4 billion entity, it would be [REDACTED], and so on down  
10          the line.

11          Now, this is just the fee for the deployment, and  
12          it is a perpetual fee. And this is the pricing that was in  
13          place in 2003.

14          Q. And again, this is a starting place before negotiations  
15          begin.

16          A. Correct.

17          Q. Now let's move to 7.6 to understand development seat  
18          pricing.

19          A. So as we discussed and saw in the contract, the license  
20          is split into the development seats and the deployment  
21          seats. The development seats are the users that are sort  
22          of integrating Blaze and writing rules or doing some kind  
23          of technical deployment of Blaze.

24          Ostensibly, and you've seen it in the contract,  
25          these are typically linked to the application, or they're

1 linked to the divisional license. You saw that reflected  
2 in both of those contracts, or they're linked to in the  
3 case of the enterprise. Right?

4 And you will see here that there are different  
5 configurations: [REDACTED]

6 [REDACTED].

7 Q. Can you explain how these [REDACTED]  
8 [REDACTED], how do they work, and what are they  
9 referencing to be, what do you look to see if something is  
10 a pack?

11 A. It's a, it's like going to the store and you want some  
12 gum. You can buy a single pack of gum or you can buy a  
13 [REDACTED]. [REDACTED] individual gum packs in a package, you  
14 save some money. That's what this is doing. It's just  
15 saying if you buy [REDACTED] at one time, we will give you a  
16 little break. If you buy [REDACTED] at one time, I will give you  
17 more of a break. That's it.

18 Q. And these are, do these translate in the license  
19 agreement as development seats?

20 A. They do. They only show up in the -- this is for  
21 pricing purposes --

22 Q. Understood.

23 A. -- for making a proposal. They would show up in a  
24 contract with a very specific scope, [REDACTED].

25 Q. And is this the 7.6 Development Seat Pricing, did that

1 carry forward into the standard methodology in 2016?

2 A. It does. We don't really sell single dev seats  
3 anymore. We only sell packs, but, yeah, it's essentially  
4 the same.

5 Q. All right. And can we go to 9.2.4.1.

6 A. I am there.

7 Q. Okay. And, yeah, the appendix, near the bottom, 9.2.4  
8 and then 9.2.4.1.

9 Blaze Advisor Deployment, and then what is this  
10 describing?

11 A. Yeah. So when you, when you buy the software, you can  
12 buy the development seats separate from the deployment  
13 seat. And you can take the development seat and start to  
14 construct a Blaze project that you are going to use.

15 If you do that, what this is saying is, you have  
16 270 days to use that before you must buy the deployment  
17 license. I don't know very many occasions where clients  
18 only bought the development seat. They buy the development  
19 and the deployment usually together.

20 But essentially it's saying that, you know, if  
21 you're developing something, you can't just use a dev seat  
22 for more than 270 days.

23 Q. So it's an option.

24 A. Yeah.

25 Q. Okay.

1 MR. HINDERAKER: Your Honor, I know it's five  
2 minutes before something like that. I'm going to turn to  
3 go into some other material, and I think it would be useful  
4 for me to make sure I have that correct.

5 THE COURT: Sure. But before we do that, can I  
6 ask counsel to approach previously.

7 MR. HINDERAKER: Sure.

8 (Sidebar discussion)

9 THE COURT: If we were to go until you were done  
10 with this, how long do you think it will take you?

11 MR. HINDERAKER: Well, the next stage is to  
12 really have him go through those slides.

13 THE COURT: Right. That seems fairly lengthy.

14 MR. HINDERAKER: It can be. And also honestly I  
15 want to look at the slides and see what the edits were and  
16 get -- satisfy myself that what was done was in my judgment  
17 was what was supposed to be done.

18 THE COURT: Right. Let me ask it this way: You  
19 know, I would be willing to keep them here till 5:30 if  
20 that would get us through all of this tonight, but I'm  
21 frankly --

22 MR. HINDERAKER: No.

23 THE COURT: -- doubtful.

24 MR. HINDERAKER: I don't think it will, and again  
25 it has this risk that I'm anxious about.



1 THE COURT: Understood.

2 Ms. Godesky, what do you know about Ms. Pawloski  
3 at this point?

4 MS. GODESKY: I apologies. I put a mint in my  
5 mouth.

6 We were trying to get ahold of her and Mr. Harkin  
7 and figure out, as we continue to prune our witness list  
8 and juggle these travel constraints, what our situation is,  
9 but we'll react within the confines we have.

10 THE COURT: Okay. So one way or another she'll  
11 get on the stand and will testify.

12 MS. GODESKY: I think so, although, I mean, we're  
13 considering not calling her because she has some issues,  
14 and we're trying to figure out what we're going to do.

15 THE COURT: Okay. Well, let me just say if it  
16 were absolutely necessary, we would take her out of order.

17 MS. GODESKY: Okay. I have appreciate that.

18 THE COURT: Okay.

19 MS. GODESKY: Thank you.

20 THE COURT: As long as you are here --  
21 You don't have to be taking this.

22 (On the record)

23 THE COURT: Okay. Members of the jury, we are  
24 going to take our break for the evening.

25 I was consulting with whether we could finish

1 with the witness before, say, 5:30, and we're not going to  
2 be able to achieve that, so we'll release you to go home  
3 tonight at the usual time.

4 But Mr. Hinderaker.

5 MR. HINDERAKER: I move the admission of  
6 Plaintiff's Exhibit 1116.

7 MS. GODESKY: And I've stated our objection.

8 THE COURT: Understood.

9 The objection is overruled. 1116 will be  
10 received.

11 And with that, we are in recess.

12 THE CLERK: All rise for the jury.

13 **IN OPEN COURT**

14 **(JURY NOT PRESENT)**

15 THE COURT: Anything further?

16 MS. GODESKY: I just wanted to ask the court's  
17 preference in terms of a directed verdict motion.

18 Our suggestion would be, if it works for the  
19 court, not to lose too much time between the hours of, you  
20 know, 9 to 5. And so at the close of plaintiff's case, if  
21 we have a motion, may we present it to the court at sidebar  
22 and then -- we would like to argue it, if the court is  
23 willing to hear us, but maybe we could do that --

24 THE COURT: At the end of the day or --

25 MS. GODESKY: Yes, if that works.

1 THE COURT: Understood. I think that would be  
2 wise. That way we don't lose the --

3 MS. GODESKY: Right.

4 THE COURT: -- the jury time. So we will plan to  
5 do that and assume that we'll take it up at the end of the  
6 day.

7 MS. GODESKY: Okay. Thank you.

8 THE COURT: Okay? All right.

9 Anything further?

10 MS. GODESKY: Not from us.

11 MR. HINDERAKER: No, Your Honor.

12 THE COURT: All right. Thanks, everyone. Have a  
13 good night.

14 (Court adjourned at 5:01 p.m., 03-01-2023.)

15  
16 We, Kristine Mousseau and Renee A. Rogge, certify  
17 that the foregoing is a correct transcript from the record  
18 of proceedings in the above-entitled matter.

19

20 Certified by: /s/Kristine Mousseau  
21 Kristine Mousseau, CRR-RPR

22 /s/Renee A. Rogge  
23 Renee A. Rogge, RMR-CRR

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